

ATTACHMENT A
Academic Department Nomination
Institutional Effectiveness Excellence Award

Department: **LAW** 

Nominated by: Dean Jack Wade Nowlin

Date of Submission: February 18, 2022

(Late submissions after February 18, 2022 will not be considered).

Checklist of enclosed items in order of presentation:

- Statement of support by college dean.
- Brief narrative (less than 1000 words) from department chair describing continuous improvement efforts to strengthen student learning in department's degree programs.
- Relevant documents (i.e., meeting minutes, revised syllabi, revised curricula, conference attendance) that illustrate the department's commitment to academic assessment.
- Please scan the entirety of your application packet into a single PDF file. Email this file to Darryl James (darryl.james@ttu.edu), Vice Provost for Institutional Effectiveness, by midnight on February 18, 2022. A confirmation email will be sent to you to verify receipt of your completed application. Winners will be notified on or before February 25, 2022.**

Thank you for your consideration.



TEXAS TECH UNIVERSITY
School of Law™

February 18, 2022

Texas Tech University
Dr. Ronald Hendrick
Provost & Senior Vice President for Academic Affairs
1500 Broadway
Lubbock, Texas 79409

RE: *Law School's Application for the 2022 Provost's Institutional Effectiveness Excellence Award*

Dear Provost Hendrick & the Award Selection Committee:

As the Dean of Texas Tech University School of Law, I am pleased to express my support for the Law School's application for the **2022 Provost's Institutional Effectiveness Excellence Award**. The Law School has taken significant steps to implement an effective assessment plan, and as described in this letter of support, it continues to stay **"Ahead of the Curve"** when it comes to assessment.

Assessment: Ahead of the Curve



Texas Tech University School of Law

Commitment to Assessment In General: At the Law School, we continue to recognize that assessment is a dynamic, faculty-driven process with the ultimate goal of improving student learning. Back in 2016, the Law School faculty approved measurable learning goals that identify what we hope our law students will learn by the conclusion of their legal education at Texas Tech. The six, program-wide Student Learning Outcomes (SLOs) are summarized below (see page 3), and the full list with related criteria is included in the Award Appendix.

Our faculty use both formative and summative methods to assess student learning. We diligently gather and analyze information related to student learning, and based on the results, we craft actions for improvement—even when we achieve our assessment benchmarks. (See the Nuventive Improve 4-column report in the Award Appendix). We truly strive to “close the [learning] loop” by improving our overall J.D. program.

- *ABA Standard 314* requires the School of Law to use “both formative and summative assessment methods in its curriculum to measure and improve student learning and provide meaningful feedback to students.”
- *ABA Standard 315* requires the dean and the faculty of a law school to “conduct ongoing evaluation of the law school’s program of legal education, learning outcomes, and assessment methods” and “use the results of this evaluation to determine the degree of student attainment of competency in the learning outcomes and to make appropriate changes to improve the curriculum.”

In addition to these ABA Standards, *SACSCOC Comprehensive Standard 3.3.1.1* addresses student learning outcomes and states: “the institution identifies expected outcomes, assesses the extent to which it achieves these outcomes, and provides evidence of improvement based on analysis of the results in each of the following areas: educational programs, to include student learning outcomes.” Furthermore, the Law School faculty comply with *Texas Tech OP 32.06*, which requires each course syllabus to include “the expected learning outcomes from the course” and “the methods of assessing those outcomes.”

Law School’s Student Learning Outcomes: In August 2015, the Law School faculty held a retreat—a substantial part of which was devoted to considering its mission statement and Student Learning Outcomes pursuant to ABA Standard 302. At that time, the Law School’s former dean created the Student Learning Outcomes/Assessment *Ad Hoc* Committee and appointed Professor Wendy-Adele Humphrey as its Chair.

Based on information obtained during a faculty retreat, the Chair prepared the initial draft of a revised mission statement and six Student Learning Outcomes with related criteria. The Committee then met several times to discuss potential revisions to the mission statement and SLOs. And to obtain feedback, the Chair created an online survey. The survey was distributed to faculty, some law school staff who have a J.D., and a targeted group of approximately 700 alums. In addition, law students received an open invitation to respond to the survey.

Ultimately, the faculty approved the program-wide SLOs in February 2016, putting the School of Law ahead of schedule according to the ABA’s timeline for approving and implementing outcomes-based SLOs. The six SLOs—each with related criteria (see the full list in Award Appendix)—include:

- (1) Substantive and procedural law;
- (2) Legal analysis, reasoning, and problem-solving;
- (3) Legal research;
- (4) Oral and written communication;
- (5) Professional and ethical responsibilities; and
- (6) Other professional skills needed for competent and ethical participation as a member of the legal profession.

These program-wide SLOs reflect the six domains that we believe students should demonstrate competency by the conferral of their degrees, and performance indicators track each of the learning outcomes and provide specific evidence that a student will have satisfied the outcomes.

While satisfying the ABA's minimal competencies, these learning outcomes also go a step further and reflect our particular goals as a law school. For example, the criteria for SLO #6 go beyond traditional skills and emphasizes maintaining civility and respect for cultural diversity as well as exhibiting a commitment to pro bono and public services activities.

NOTE: *The Managing Director of the Office of Planning and Assessment at Texas Tech University has confirmed that the Law School's assessment cycle for the ABA is sufficient for compliance with SACSCOC Standard 3.3.1.1. Thus, the Law School follows the assessment cycle and does not assess every outcome every year. As reflected in Nuventive Improve, each year the Law School focuses on one or two of its six Student Learning Outcomes.*

2021-22 Five-Year Review of Program-Wide SLOs: During Fall 2021, the Law School started engaging in a five-year review of its six J.D. Student Learning Outcomes. During a faculty retreat in October, Associate Dean Humphrey presented a Ted Lasso-inspired assessment update (see the PowerPoint in the Award Appendix). Then, members of the Assessment Committee lead small-group discussions in Zoom breakout rooms, focusing on possible revisions to the current SLOs. After the retreat, a representative from each breakout room sent an email to Associate Dean Humphrey and included specific recommendations to improve the SLOs. This semester, Associate Dean Humphrey and the Assessment Committee are continuing to work through possible revisions. The goal is to have revised SLOs approved by the full faculty by the end of the Spring 2022 semester.

Assessment Activity Has Resulted in Improvement: Below I showcase some of the Law School's other assessment activity that evidences its genuine commitment to staying "Ahead of the Curve" and improving student learning.

- The Law School faculty unanimously approved an Assessment Plan that includes a seven-year implementation cycle. (See the implementation cycle in the Award Appendix.)
- The J.D. Student Learning Outcomes are published on the law school's website (click [HERE](#)), and the entering students typically receive a copy of the SLOs during 1L Orientation. Student Learning Outcomes for specialty tracks/concentrations are also published on the website, and course-level SLOs are included in each course syllabus.



▪ The Law School's 2018-19 Program Assessment Rubric (PAR), included in the Award Appendix, indicates an overall score of 3.77/4.0, with a perfect 4.0 score in the Assessment Methods category and the Actions for Improvement category. The Law School's report was recognized as "exemplar." NOTE: During 2020-21, the TTU Office of Planning & Assessment conducted a review of only the 2019-20 undergraduate programs. Therefore, the Law School does not have a PAR for the 2019-20 academic year. And it has not yet received a PAR based on the information it submitted for the 2020-21 academic year.

▪ The Director of Assessment and the Assessment Committee always seek opportunities to increase the law faculty's knowledge of assessment-related topics. For example, at every other faculty meeting, there has been an "*Assessment Spotlight*." Faculty also receive articles about assessment-related topics. (See Assessment Spotlight examples and some articles in the Award Appendix).

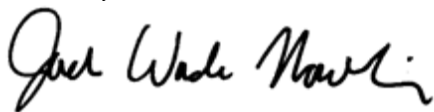
▪ The Director of Assessment continues to gather student-learning information from faculty at the end of each semester. The submission rate is typically very high because the use of an online form makes the process quick and easy.

▪ The COVID-19 pandemic has not thrown the Law School a curve ball when it comes to its commitment to assessment. As faculty were thrust into emergency online teaching in March 2020, law faculty were educated on ways to incorporate assessment methods into their online teaching. For example, the Law School hosted workshops on how to effectively use assessment tools on both Blackboard and Zoom, e.g., polling, and other interactive tools. As a result, the faculty were able to seamlessly transition to an online environment while maintaining legal education rigor.

▪ One Law School assessment method for several program-wide SLOs is the passage rate on a bar exam. In 2019, the Law School saw a drop in bar passage (even though it still met its benchmark for assessment reporting purposes). In response to the drop, the Law School took swift action to address student learning by developing a Student Success Initiative (SSI) and a Bar Readiness Workshop Series. These successful, continuous efforts for improvement are briefly addressed in Associate Dean Humphrey's letter of support, and documents related to these projects are included in the Award Appendix.

Conclusion: At the Law School, our assessment practices are "**Ahead of the Curve!**" The level of faculty engagement throughout the assessment process is unparalleled, and the faculty continues to show its commitment to academic assessment. I am hopeful that the Award Selection Committee will agree that the Law School is deserving of the **2022 Provost's Institutional Effectiveness Excellence Award**. Thank you for your consideration.

Sincerely,



Jack Wade Nowlin
Dean and W. Frank Newton Professor of Law



Associate Dean's "Letter": **C**ontinuous **I**mprovement **E**fforts

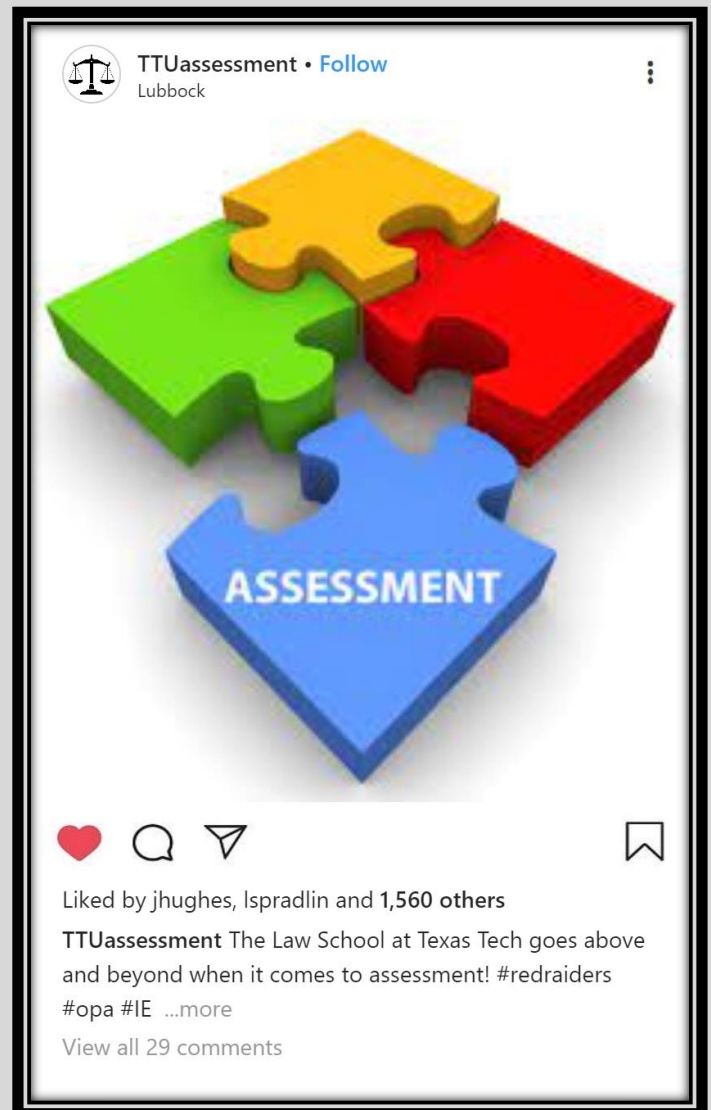
In lieu of a traditional letter, below is an interview with Associate Dean for Academic Affairs and **Director of Assessment**, Wendy-Adele Humphrey, about the Law School's assessment efforts.

To start, please tell us generally why the Law School is deserving of this IE award.

The Law School has been *"ahead of the curve"* for years when it comes implementing an outcomes-based assessment plan and seeking to improve its students' learning. The faculty understands the importance of outcomes-based assessment and has taken significant steps to ensure compliance with American Bar Association (ABA) and SACSCOC assessment standards. As illustrated by Dean Nowlin's letter, this "letter," and the materials in the Award Appendix, the Law School's commitment to assessment excellence rises above the rest!

We will come back to some of the things you just mentioned, but first, how did you become the Director of Assessment?

As part of the SACSCOC visit in 2015, the former dean asked me to assist with evaluating the Law School's assessment process, including the Student Learning Outcomes (SLOs) information in Nuventive Improve (f/k/a TracDat). I have a M.Ed. in Curriculum & Instruction and had the knowledge to take the lead at the Law School. Fast forward to 2022, and I am still taking the lead—with the help of the Dean, an Assessment Committee, and the entire faculty.



You mentioned ABA assessment standards. Please tell us a little bit more about those.

About the same time as the SACSCOC visit, our accrediting body—the ABA—approved new assessment standards that required the Law School to shift to a learning outcomes model. The ABA provided a phase-in process to allow law schools adequate time to plan and implement the new standards. We quickly jumped on board to make sure the Law School fully complied with both ABA and SACSCOC standards.

So how do the ABA and SACSCOC standards work together?

Both standards require SLOs and direct the Law School to gather assessment data and analyze the data to determine if actions for improvement are needed to “close the loop” in student learning.



Did you work closely with the Office of Planning & Assessment throughout the initial process?

Absolutely! Everyone in OPA is so helpful. And OPA confirmed that the implementation cycle for our SLOs is sufficient for both the ABA and SACSCOC, so that enables us to streamline the assessment process.

What does the Assessment Committee at the Law School?

The Assessment Committee is instrumental in making sure the Law School continues to take steps to strengthen student learning. For instance, during a faculty retreat in September 2021, the committee members led small group discussions to get input about possible revisions to our program-wide SLOs. Sometimes, the committee is also involved in reviewing syllabi to provide feedback on course-level SLOs. Additionally, committee members have presented as part of the “Assessment Spotlight” during some faculty meetings.

As the Director of Assessment, what other things do you do to promote continuous improvement efforts?

So many things! I regularly present assessment-related information at faculty retreats and faculty meetings. Doing so helps keep the faculty up to date on assessment and provides transparency about the Law School’s assessment process. I also speak to our students during 1L Orientation and at some mandatory meetings so they understand our commitment to their learning. Additionally, I serve on the campus-wide Institutional Effectiveness Committee. Over the years, other law schools have even reached out to me to present to their faculty. I also regularly present on the topic of assessment at national conferences.

What are some specific examples of continuous improvement efforts to strengthen student learning?

When first transitioning to outcomes-based assessment, the Law School took significant steps to address student learning.

- *June 2015:* Added an Associate Dean for Educational Effectiveness (now the Director of Assessment) to lead assessment efforts.
- *Fall 2015:* Drafted SLOs and obtained feedback from faculty, staff, students, and alumni.
- *Fall 2015 to present:* Timely report to the ABA and SACSCOC. Regularly make presentations at faculty meetings.
- *February 2016:* Faculty approved new program-wide SLOs.
- *Spring 2016:* Developed an Assessment Plan, including an implementation cycle.
- *Since Fall 2016:* The Law School has followed an Assessment Plan on an annual basis.

Some concrete examples of the Law School's continuous improvement efforts to strengthen student learning since 2019 include the development and implementation of: (1) the INTRODUCTION TO THE STUDY OF LAW course; (2) the STUDENT SUCCESS INITIATIVE; and (2) the BAR READINESS WORKSHOP SERIES.

- **Introduction to the Study of Law course:** In Spring 2019, the Law School developed a new required course for first-year law students. The course was designed to teach incoming law students how to succeed in law school. Taught in small sections of less than twenty students, the course helps students learn how to, among other things, prepare for class efficiently and effectively and to analyze practice essay questions.
- **Student Success Initiative:** In response to a decrease in the bar exam pass rate, during Spring 2020, the Law School developed an initiative to help students in approximately the bottom 30% of the 3L class. This target group is most at-risk when it comes to passing a bar exam. Each student in the target group was assigned a mentor who provided support and guidance up until the student took a bar exam in July. This additional outreach and support made a difference, as the bar exam pass rate increased!
- **Bar Readiness Workshop Series:** During Spring 2020, the Law School created a workshop series to help 3L students better prepare for taking a bar exam. The series included workshops focused on the various parts of the bar exam. Coupled with the Student Success Initiative, the workshop series has strengthened students' learning.

Additionally, the Law School is currently engaging in a 5-year review of its program-wide SLOs, which will be completed this semester.



(Total of 983 words in the body of the “letter.”)



Institutional Effectiveness Excellence Award
INTERNAL EVIDENCE APPENDIX

- 1- **Nuventive Improve reports** that document the Law School's commitment to continuous improvement of student learning at the degree-program level.
- 2- **Program Assessment Rubric (PAR) for AY 2018-2019** (The Law School was not reviewed for AY 2019-2020. OPA is currently working on the AY 2020-2021 PARs.)
- 3- **Law School's Assessment Plan 2021-2022** (includes the full list of the J.D. Student Learning Outcomes)
- 4- **Faculty Meeting Agendas** that show "Assessment Spotlight" agenda items (also included are some faculty meeting materials that are related to assessment).
- 5- **Faculty Retreat September 2021 – Assessment Presentation** (presented to start the five-year review of the program-wide SLOs)
- 6- **Introduction to the Study of Law course syllabus** (required 1L course added in 2019 to improve student learning)
- 7- **Bar Success Program materials** (2021-2022 Program Plan, Bar Readiness Workshop Series flyer, and sample workshop PowerPoints)
- 8- **Student Success Initiative summaries** (2019-2020 and 2020-2021)
- 9- **Evidence of Conference Presentations on the Topic of Assessment**



Texas Tech University Annual Assessment Report

Degree Program - LAW - Law (JD)

CIP Code: 22.0101.00

Disciplinary Accrediting Body: American Bar Association

Next Accrediting Agency Review: 2028

Degree Program Coordinator Name: Wendy-Adele Humphrey

Degree Program Coordinator Email: wendy.humphrey@ttu.edu

Degree Program Coordinator Phone: 806-834-4446

Degree Program Coordinator Mail Stop: 0004

Program Purpose Statement: The Texas Tech University School of Law maintains a rigorous legal education program that prepares its students for admission to the bar and for effective and ethical participation as members of the legal profession.

APPROVED ASSESSMENT CYCLE: The School of Law last adopted a comprehensive set of Student Learning Outcomes (SLO) for the J.D. degree program in February 2016. Following guidance from its accrediting body, the American Bar Association (ABA), it developed an assessment cycle for its six, program-wide SLOs. The assessment cycle was reviewed by the ABA as part of the Law School's reaccreditation visit in 2018, and the cycle was also approved by the Texas Tech University Office of Planning & Assessment. Thus, while the majority of degree programs at Texas Tech University have two or more active SLOs each academic year, the School of Law continues to meet its assessment obligations by following its approved assessment cycle.

5-YEAR REVIEW OF STUDENT LEARNING OUTCOMES: During the 2021-2022 academic year, the Law School faculty and administration will be engaging in a five-year review of the J.D. Student Learning Outcomes and revising the outcomes, as necessary.

NOTE: When reviewing the School of Law's annual assessment report in Nuventive Improve, please account for the fact that the approved assessment cycle entails obtaining and evaluating data for only one or two active, highly developed SLOs. If you have any questions about the assessment cycle, please contact the degree program coordinator.

Assessment Coordinator (exact title): Associate Dean for Academic Affairs & Director of Assessment

Assessment Coordinator email: wendy.humphrey@ttu.edu

Modality: Face-to-Face

Annual Reviews

2019 - 2020

Related Documents:

[Degree Program - LAW - Law \(JD\).pdf](#)

2018 - 2019

PAR Status: Pass

PAR Score: 3.77

Related Documents:

[Law \(JD\).pdf](#)

[Law \(JD\) 2018-2019 PAR Summary.doc](#)

2017 - 2018

PAR Status: Pass

PAR Score: 3.55

Related Documents:

[Degree Program - LAW - Law \(JD\).pdf](#)

[School of Law- Law \(JD\).doc](#)

Student Learning Outcomes

Assessment Methods

Results Data

Analyses of Result Data

Legal Research - The School of Law developed an assessment cycle for its six program-wide Student Learning Outcomes. The assessment cycle has been approved by the American Bar Association (ABA) and the Texas Tech University Office of Planning & Assessment and is included in the 2020-2021 Assessment Plan. During 2020-2021, the School of Law is focusing on two of the six Student Learning Outcomes, one of which is "Legal Research" (See ABA Standard 302(b)). Following the School of Law's approved assessment cycle, this SLO was last active during the 2016-2017 academic year.

Students will demonstrate competent skills in legal research, including the following skills: (1) identify and describe the roles and differing characteristics of sources of law, including the weight of authority; (2)

Embedded Assessments - Achievement of this Student Learning Outcome will be evidenced by students' performance on a variety of embedded assessments in courses that involve research and citation.

Criterion: Faculty who assess this SLO will report that 80% or more of students will demonstrate competent skills in legal research.

Related Documents:
[Assessment Plan 2020-21.docx](#)

Course Level Assessment - Achievement of this Student

Assessment Cycle: 2020 - 2021

Result Type: Criterion Met
Faculty who assess this SLO reported that more than 90% of their students demonstrated competent skills in legal research, thus surpassing the benchmark. The links to the online faculty surveys are included as Related Documents, and the results are on file with the Law School's Director of Assessment. (09/21/2021)

Related Documents:
[Excellence in Legal Research](#)
[Legal Practice - Sample Syllabus.pdf](#)
[Online Faculty Survey - SLOs - Fall 2020](#)
[Online Faculty Survey - SLOs Spring 2021](#)

Assessment Cycle: 2020 - 2021
Result Type: Criterion Met

Analysis of Result Data: The Law School met this benchmark for this assessment method, but it still strives to improve student learning of legal research. For example, the nationally ranked Legal Practice Program will seek to better align class sessions on legal research with the Law Library's research workshops and Westlaw/Lexis research workshops. (10/01/2021)

Analysis of Result Data: The Law School met this benchmark for this assessment method, but it still strives to improve student learning of legal research. Therefore, the Law School faculty will review the content and timing of the Excellence in Legal Research Program to see if any improvements can be made. (10/01/2021)

Analysis of Result Data: The Law

<i>Student Learning Outcomes</i>	<i>Assessment Methods</i>	<i>Results Data</i>	<i>Analyses of Result Data</i>
<p>research plan that employs the appropriate tools of legal research; and (3) use proper citation when required.</p> <p>Outcome Status: Active</p> <p>Outcome Type: Student Learning</p> <p>Start Date: 08/17/2020</p> <p>End Date: 10/01/2021</p>	<p>Learning Outcome will be evidenced by successful completion of an upper-level writing requirement.</p> <p>Criterion: 80% or more of students who take an upper-level writing requirement course will successfully complete the requirement, which inherently involves sources of law, legal research tools, and citation.</p> <p>Related Documents: Assessment Plan 2020-21.docx</p>	<p>Based on review of students' semester grades in courses in which they can fulfill the upper-level writing requirement, 100% successfully completed the requirement on the first attempt. (10/01/2021)</p> <p>Related Documents: Upper-Level Writing Requirement Policy</p>	<p>School met its benchmark for the assessment method, but it plans to review the course offerings so that students might have additional course choices for fulfilling the upper-level writing requirement. (10/01/2021)</p> <hr/> <p>Analysis of Result Data: The Law School met its benchmark for this assessment method, but it plans to explore if the Scholarly Writing Series, which is currently a three-part learning series available on TWEN, could be improved and utilized more in courses that can fulfill the upper-level writing requirement. (10/01/2021)</p>
<p>Legal Analysis, Reasoning & Problem-Solving - The School of Law developed an assessment cycle for its six program-wide Student Learning Outcomes. The assessment cycle has been approved by the American Bar Association (ABA) and the Texas Tech University Office of Planning & Assessment and is included in the 2020-2021 Assessment Plan. During 2020-2021, the School of Law is focusing on two of the six Student Learning Outcomes, one of which is "Legal Analysis, Reasoning & Problem-Solving" (See ABA Standard 302(b)).</p> <p>Graduates will demonstrate competent skills in legal analysis, reasoning, and problem-solving, including the following skills: (1) accurately identify the material facts,</p>	<p>Class Discussions - Achievement of this Student Learning Outcome will be evidenced by class discussions in which law students demonstrate competent legal analysis, reasoning, and problem-solving.</p> <p>Criterion: 80% of a representative number of students will demonstrate competent skills in legal analysis, reasoning, and problem-solving during class discussions.</p> <p>Related Documents: Assessment Plan 2020-21.docx</p>	<p>Assessment Cycle: 2020 - 2021</p> <p>Result Type: Criterion Met</p> <p>Faculty who use class discussions to assess this SLO reported that more than 90% of their students demonstrated competent legal analysis, reasoning, and problem-solving skills. (10/01/2021)</p> <p>Related Documents: Revised Graduation Requirements Policy Online Faculty Survey - SLOs - Fall 2020 Online Faculty Survey - SLOs Spring 2021</p>	<p>Analysis of Result Data: The Law School met its benchmark for this assessment method, but it will continue to educate faculty on ways to effectively lead class discussions so students can improve these skills. (10/01/2021)</p> <hr/> <p>Analysis of Result Data: The Law School met its benchmark for this assessment method, but in 2021-22, it plans to require a "Legal Analysis" course during Fall 2021. First-year students who end up in approximately the bottom 20% of the class will be required to take the course to help them further develop their legal analysis, reasoning, and problem-solving skills. The faculty revised the Law School's Graduation Requirements</p>

Student Learning Outcomes

Assessment Methods

Results Data

Analyses of Result Data

procedural history, issues on appeal, rules of law, reasoning, holding, and policy in appellate court opinions; (2) identify and describe legal issues implicated by a factual scenario; (3) identify and describe relevant legal authority applicable to identified legal issues; (4) identify and describe key rules and reasoning contained within applicable authority; (5) effectively synthesize and reconcile multiple legal authorities when applicable; (6) effectively analogize and distinguish precedent, and (7) propose reasonable resolutions to legal problems.

Outcome Status: Active

Start Date: 08/17/2020

End Date: 10/01/2021

Comprehensive Exam - Achievement of this Student Learning Outcome will be evidenced by the graduates' performance of a bar exam.

Criterion: 80% of graduates who take a bar exam will pass on the first attempt.

Related Documents:

[Assessment Plan 2020-21.docx](#)

Assessment Cycle: 2020 - 2021

Result Type: Criterion Met

According to data published by the Law School's accrediting agency, the American Bar Association (ABA), the first-time bar passage rate for the last reporting cycle was 93.82%, and the Ultimate Bar Passage rate is 95.92% (which is second highest among all ten law schools in Texas). This result is remarkable given the adversity students encountered due to the COVID-19 pandemic and a severe winter storm that occurred around the administration of the February 2021 bar exam. (10/01/2021)

Related Documents:

[ABA Bar Passage Report 2021.pdf](#)

[Student Success Initiative Report 2020-21.docx](#)

policy to reflect this change in the curriculum. (10/01/2021)

Analysis of Result Data: The Law School met its benchmark for this assessment method, but it plans to review its Student Success Initiative to see if the content and/or timing might be improved. This initiative was developed in Spring 2020 and was implemented in Spring 2020 and Spring 2021. It focuses on providing helpful workshops for all third-year students and providing mentorship opportunities for third-year students who are in approximately the bottom 25% of the class. (10/01/2021)

Analysis of Result Data: The Law School met its benchmark for this assessment method, but it plans to review the "bar preparation" courses that are currently offered as semester-long courses, e.g., Advanced Legal Analysis, to see if improvements can be made. (10/01/2021)

Comprehensive Exam - Achievement of this Student Learning Outcome will be evidenced by graduates' performance on the Multistate Professional Responsibility Exam (MPRE).

Criterion: 85% of December 2020 and May 2021 law graduates who report their MPRE score to the Texas Board of Law Examiners will pass the comprehensive exam within six months of graduation.

Assessment Cycle: 2020 - 2021

Result Type: Criterion Met

Based on results provided to the Law School by the Texas Board of Law Examiners (BLE), more than 85% of December 2020 and May 2021 graduates passed the MPRE within six months of graduation. (Note: Graduates do have the opportunity to take the MPRE in early November, so those results are obviously not included in this initial result). To protect students' privacy, the specific results on on file with the Law School's Director of Assessment. (10/01/2021)

Analysis of Result Data: The Law School met its benchmark for this assessment method, but it plans to review the content and timing of the MPRE workshop(s) offered to third-year students during the spring semester. (10/01/2021)

Related Documents:

[Assessment Plan 2020-21.docx](#)

Embedded Assessments -

Achievement of this Student Learning Outcome will be evidenced by students' performance on embedded assignments that allow them to demonstrate competent legal analysis, reasoning, and problem-solving skills.

Criterion: Faculty will report that 80% of students demonstrate competent legal analysis, reasoning, and problem-solving skills in embedded course assignments.

Related Documents:

[Assessment Plan 2020-21.docx](#)

Assessment Cycle: 2020 - 2021

Result Type: Criterion Met

Faculty who assessment this SLO reported via an online survey that more than 90% of their students demonstrated competent legal analysis, reasoning, and problem-solving skills. (10/01/2021)

Related Documents:

[Online Faculty Survey - SLOs - Fall 2020](#)

[Online Faculty Survey - SLOs Spring 2021](#)

Analysis of Result Data: The Law School met its benchmark for this assessment method, but it plans to continue educating faculty on ways to incorporate effective, embedded assessments into their respective courses. (10/01/2021)

Analysis of Result Data: The Law School met its benchmark for this assessment method, but it will explore the possibility of creating a student survey to get the student perspective as to their legal analysis, reasoning, and problem-solving skills. (10/01/2021)

Texas Tech University Annual Assessment Report

Degree Program - LAW - Law (JD)

CIP Code: 22.0101.00

Disciplinary Accrediting Body: American Bar Association

Next Accrediting Agency Review: 2028

Degree Program Coordinator Name: Wendy-Adele Humphrey

Degree Program Coordinator Email: wendy.humphrey@ttu.edu

Degree Program Coordinator Phone: 806-834-4446

Degree Program Coordinator Mail Stop: 0004

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5-YEAR REVIEW OF STUDENT LEARNING OUTCOMES: During the 2021-2022 academic year, the Law School faculty and administration will be engaging in a five-year review of the J.D. Student Learning Outcomes and revising the outcomes, as necessary.

NOTE: When reviewing the School of Law's annual assessment report in Nuventive Improve, please account for the fact that the approved assessment cycle entails obtaining and evaluating data for only one or two active, highly developed SLOs. If you have any questions about the assessment cycle, please contact the degree program coordinator.

Assessment Coordinator (exact title): Associate Dean for Academic Affairs & Director of Assessment

Assessment Coordinator email: wendy.humphrey@ttu.edu

Modality: Face-to-Face

<i>Student Learning Outcomes</i>	<i>Assessment Methods</i>	<i>Results Data</i>	<i>Analyses of Result Data</i>
Written and Oral Communication - The School of Law developed an assessment cycle for its six program-wide Student Learning Outcomes. The	Comprehensive Exam - Achievement of this SLO will be evidenced by our graduates' performance on the Multistate Performance Test (MPT)	Assessment Cycle: 2018 - 2019 Result Type: Criterion Met The Multistate Performance Test (MPT) portion of the Texas bar exam "is designed to test an examinee's ability to use	Analysis of Result Data: Starting in February 2021, Texas will be administering the Uniform Bar

Student Learning Outcomes

assessment cycle has been approved by the American Bar Association (ABA) and the Texas Tech University Office of Planning & Assessment and is included in the 2018-2019 Assessment Report. During 2018-2019, the School of Law focused on "Written and Oral Communication" (See ABA Standard 302(b)).

Graduates will demonstrate competent skills in written and oral communication, including the following skills: (1) communicate effectively by employing predictive, persuasive, and operational writing techniques, and (2) engage in effective and professional oral communication, including the delivery of an oral argument.

Outcome Status: Inactive

Start Date: 08/20/2018

End Date: 10/01/2019

Assessment Methods

portion of the Texas bar exam.

Criterion: 80% or more of graduates will score above the 20th percentile on the Multistate Performance Test (MPT) portion of the Texas bar exam.

Related Documents:

[Assessment Plan 2018-19.docx](#)

[SLO Benchmark Chart 2018-19.docx](#)

[Assessment Report SACSCOC 2018-19.pdf](#)

Results Data

fundamental lawyering skills in a realistic situation and complete a task that a beginning lawyer should be able to accomplish." (National Conference of Bar Examiners website). In July 2018, the law school had 130 first-time takers of the Texas bar exam, 111 of whom scored above the 20th percentile on the Multistate Performance Test portion. In February 2019, the law school had 12 first-time takers, 9 of whom scored above the 20th percentile. Thus, for these two exams, the law school has a total of 142 first-time takers of the Texas bar exam, 120 of whom scored above the 20th percentile on this portion of the exam. This number equates to 84.5% of first-time takers scoring above the 20th percentile. (09/29/2019)

Related Documents:

[Assessment Report SACSCOC 2018-19.pdf](#)

[Student Success Initiative Summary Spring 2020.pdf](#)

Analyses of Result Data

Examination (UBE), which includes two MPT tasks. In past years, the faculty who teach in the nationally ranked Legal Practice Program administered a practice MPT as part of its spring semester curriculum. The program will explore whether this practice test should be added back to expose 1L students to the types of tasks that may be included in the UBE. (09/29/2019)

Follow-Up: Evidence of

Improvement: The Law School developed a Student Success Initiative during Spring 2020 and offered all students a workshop on the Multistate Performance Test (MPT). As a result, the professors who teach Legal Practice did not require first-year students to complete a practice MPT. (09/30/2020)

Analysis of Result Data: The Associate Dean for Bar Success will explore whether to hold additional Multistate Performance Test (MPT) workshops to allow upper-class students to practice tasks that have been included in previous Texas bar exams. (09/29/2019)

Follow-Up: Evidence of

Improvement: The Law School developed a Student Success Initiative during Spring 2020 and offered all students a workshop on the Multistate Performance Test (MPT). (09/30/2020)

Student Learning Outcomes

Assessment Methods

Embedded Assessments -
Achievement of the SLO will be evidenced by our students' performance on embedded assessments in the required Legal Practice course, including a predictive memo, a pre-trial brief, a contract, an appellate brief, and an appellate oral argument, as well as embedded assessments in other law school courses.

Criterion: Faculty who assess this SLO will report that 80% or more of their students have "competent" written and oral communication skills.

Related Documents:

[Assessment Plan 2018-19.docx](#)

[SLO Benchmark Chart 2018-19.docx](#)

[Assessment Report SACSCOC 2018-19.pdf](#)

Results Data

Assessment Cycle: 2018 - 2019

Result Type: Criterion Met
Faculty reporting of student learning at the course-level indicates that, based on embedded assessments, more than 80% of students enrolled in courses that included assessment of Criterion #1 and Criterion #2 are "competent." (09/29/2019)

Related Documents:

[Assessment Report SACSCOC 2018-19.pdf](#)

[Sample Legal Practice Syllabus 2019-2020.pdf](#)

Analyses of Result Data

Analysis of Result Data: The faculty who teach in the nationally ranked Legal Practice will explore ways to teach the knowledge and skills to better address written communication, e.g., assign shorter writing assignments to provide feedback on multiple short memos/briefs rather long memo/briefs. (09/29/2019)

Follow-Up: Evidence of Improvement: Some faculty who teach Legal Practice have modified their two-semester, required course to incorporate some shorter written communication assignments, including email communication. Law students are graded on a curve, but the overall performance of first-year students has appeared to improve. (09/30/2020)

Analysis of Result Data: The Board of Barristers advocacy organization will continue to explore ways to provide meaningful feedback to law students who participate in advocacy competitions that include a written and/or oral component. (09/29/2019)

Follow-Up: Evidence of Improvement: The number of law students who participate in advocacy competitions, intra-school and inter-school, has increased because the overall number of available competitions

has increased. The Board of Barristers has increased the meaningful feedback by providing training sessions and using more practicing attorneys during team practices and competitions. (09/30/2020)

Analysis of Result Data: All faculty will be reminded that they should seek ways to incorporate assessment methods into their courses so that law students will have additional opportunities to develop their skills in written and oral communication. (09/29/2019)

Follow-Up: Evidence of Improvement: Faculty are regularly reminded of ways they should incorporate assessment methods into their courses. Faculty also reported their assessment methods in their annual faculty evaluation submission and in response to online surveys conducted when they shifted to online teaching during COVID-19. (09/30/2020)

Professional and Ethical

Responsibilities - The School of Law developed an assessment cycle for its six program-wide Student Learning Outcomes. The assessment cycle has been approved by the American Bar Association (ABA) and the Texas Tech University Office of Planning & Assessment and is included in the 2018-2019 Assessment Plan. During 2018-2019, the School of Law focused

Comprehensive Exam - Achievement of this SLO will be evidenced by our students' performance on the Multistate Professional Responsibility Exam (MPRE). A passing score of 85 is required to practice law in Texas.

Criterion: 85% or more of our graduates who report their MPRE score to the Texas Board of Law Examiners will pass the exam with

Assessment Cycle: 2018 - 2019

Result Type: Criterion Met
More than 90% of students graduating in December 2018 or May 2019 who had their Multistate Professional Responsibility Exam (MPRE) score reported to the Texas Board of Law Examiners have passed the exam. (09/29/2019)

Related Documents:
[Assessment Report SACSCOC 2018-19.pdf](#)

Analysis of Result Data: Faculty and administration will explore ways to reiterate the importance of taking the MPRE before March if the student is graduating in May (the exam is administered three times a year) because the March exam is the last opportunity to take the exam before graduating and taking the bar exam. Also, based on historical data, students

<i>Student Learning Outcomes</i>	<i>Assessment Methods</i>	<i>Results Data</i>	<i>Analyses of Result Data</i>
<p>on "Professional and Ethical Responsibilities" (See ABA Standard 302(c)).</p> <p>Graduates will demonstrate competent knowledge of professional and ethical responsibilities, including the following: (1) identify and describe the applicable rules and standards governing lawyers' professionalism and ethical responsibilities; (2) apply knowledge of professional ethics to the resolution of identified dilemmas; (3) apply knowledge of professional ethics in the context of oral and written advocacy; and (4) demonstrate professionalism through conduct consistent with the legal profession's values and standards.</p> <p>Outcome Status: Inactive Start Date: 08/20/2018 End Date: 10/01/2019</p>	<p>six months of graduation.</p> <p>Related Documents: Assessment Plan 2018-19.docx SLO Benchmark Chart 2018-19.docx Assessment Report SACSCOC 2018-19.pdf</p>	<p>Assessment Cycle: 2018 - 2019 Result Type: Criterion Met Faculty reporting of student learning at the course-level indicates that, based on embedded assessments, more than 75% of students enrolled in courses that assess professional and the responsibilities are "competent." (Students are typically assessed in more than one course.) (09/29/2019)</p> <p>Related Documents: Assessment Report SACSCOC 2018-19.pdf</p>	<p>often do not pass on the first attempt (and the exam is comprised of only 60 multiple choice questions). Therefore, the faculty and administration will also encourage students to take steps necessary to pass the exam on the first attempt. (09/29/2019)</p> <p>Follow-Up: Evidence of Improvement: The Law School developed a Student Success Initiative during Spring 2020 and offered all students a workshop on the MPRE. The Initiative actively involved five professors and two staff members who conducted personal outreach to students in the lower one-third of the class to make sure they had a plan to take the MPRE. However, some plans to take the MPRE were disrupted by the COVID-19 pandemic. (09/30/2020)</p>
	<p>Embedded Assessments - Achievement of this SLO will be evidenced by embedded assignments in Professional Responsibility, Legal Practice, and other courses that address knowledge of professional and ethical responsibilities. Criterion: Faculty who assess this SLO will report 75% or more of their students have "competent" knowledge and skills related to professional and ethical responsibilities.</p> <p>Related Documents:</p>		<p>Analysis of Result Data: Faculty will explore ways to incorporate additional embedded assignments to provide students with meaningful feedback on issues related to professional ethical responsibilities. (09/29/2019)</p> <p>Follow-Up: Evidence of Improvement: Some faculty who teach Professional Responsibility and other courses that address professional ethical responsibilities have added interactive assessment tools, e.g., Mentimeter and Top Hap, to</p>

Student Learning Outcomes

Assessment Methods

Results Data

Analyses of Result Data

[Assessment Plan 2018-19.docx](#)
[SLO Benchmark Chart 2018-19.docx](#)
[Assessment Report SACSCOC 2018-19.pdf](#)

Course Level Assessment - Achievement of this SLO will be evidenced by students' semester grades in the required Professional Responsibility course. While semester grades are typically not used as an assessment method, this course is devoted entirely to professional and ethical responsibilities, and is therefore an effective assessment method.
Criterion: 70% or more of students enrolled in Professional Responsibility will score a C+ or higher.

Related Documents:
[Assessment Plan 2018-19.docx](#)
[SLO Benchmark Chart 2018-19.docx](#)
[Assessment Report SACSCOC 2018-19.pdf](#)

Performance - Achievement of this SLO will be evidenced by students' professionalism performance in the required Legal Practice course, which is a two-semester course required for all 1Ls. A portion of students' semester grade is based on professional behavior/conduct that is consistent with the legal profession's values and standards.
Criterion: 85% or more students in Legal Practice will be assessed as demonstrating professional behavior.

Assessment Cycle: 2018 - 2019
Result Type: Criterion Met
More than 80% of law students enrolled in the required Professional Responsibility course in 2018-19 earned a semester grade of a C+ or higher. (09/29/2019)

Assessment Cycle: 2018 - 2019
Result Type: Criterion Met
Professors who teach in the nationally ranked Legal Practice reported that more than 90% of the 1L class conducted themselves in a professional manner during this required course. (10/01/2019)
Related Documents:
[Assessment Report SACSCOC 2018-19.pdf](#)

provide students with additional, meaningful feedback. (09/30/2020)

Analysis of Result Data: Faculty who teach the required Professional Responsibility course will continue to explore ways to provide meaningful, formative assessment to assess their students' learning throughout the semester. (09/29/2019)

Follow-Up: Evidence of Improvement: Some faculty who teach Professional Responsibility have added interactive assessment tools, e.g., Top Hap, to provide students with additional, meaningful feedback. (09/30/2020)

Analysis of Result Data: Faculty who teach Legal Practice will explore ways to further address professionalism in the course, e.g., turning assignments in on time, being on time for class, etc. (10/01/2019)

Follow-Up: Evidence of Improvement: All professors who teach in the Legal Practice Program now include "professionalism" as either 5% or 10% of a student's semester grade. (09/30/2020)

Student Learning Outcomes

Assessment Methods

Results Data

Analyses of Result Data

Related Documents:

[Assessment Plan 2018-19.docx](#)

[Assessment Report SACSCOC 2018-19.pdf](#)

[SLO Benchmark Chart 2018-19.docx](#)

Legal Research - The School of Law developed an assessment cycle for its six program-wide Student Learning Outcomes. The assessment cycle has been approved by the American Bar Association (ABA) and the Texas Tech University Office of Planning & Assessment and is included in the 2020-2021 Assessment Plan. During 2020-2021, the School of Law is focusing on two of the six Student Learning Outcomes, one of which is "Legal Research" (See ABA Standard 302(b)). Following the School of Law's approved assessment cycle, this SLO was last active during the 2016-2017 academic year.

Students will demonstrate competent skills in legal research, including the following skills: (1) identify and describe the roles and differing characteristics of sources of law, including the weight of authority; (2) create and implement a logical research plan that employs the appropriate tools of legal research; and (3) use proper citation when required.

Outcome Status: Active

Outcome Type: Student Learning

Start Date: 08/17/2020

End Date: 10/01/2021

Embedded Assessments -

Achievement of this Student Learning Outcome will be evidenced by students' performance on a variety of embedded assessments in courses that involve research and citation.

Criterion: Faculty who assess this SLO will report that 80% or more of students will demonstrate competent skills in legal research.

Related Documents:

[Assessment Plan 2020-21.docx](#)

Self-Assessments - Achievement of this Student Learning Outcome will be demonstrated by the results of a student self-assessment survey, in which students report on their level of learning.

Criterion: 80% or more of students who respond to an online survey will indicate they are "competent" at legal research.

Assessment Cycle: 2020 - 2021

Result Type: Criterion Met

Faculty who assess this SLO reported that more than 90% of their students demonstrated competent skills in legal research, thus surpassing the benchmark. The links to the online faculty surveys are included as Related Documents, and the results are on file with the Law School's Director of Assessment. (09/21/2021)

Related Documents:

[Excellence in Legal Research](#)

[Legal Practice - Sample Syllabus.pdf](#)

[Online Faculty Survey - SLOs - Fall 2020](#)

[Online Faculty Survey - SLOs Spring 2021](#)

Assessment Cycle: 2020 - 2021

Result Type: Not Applicable

During the 2020-2020 academic year, the Law School did not plan to conduct a student survey as part of its assessment this SLO. (10/01/2021)

Analysis of Result Data: The Law School met this benchmark for this assessment method, but it still strives to improve student learning of legal research. For example, the nationally ranked Legal Practice Program will seek to better align class sessions on legal research with the Law Library's research workshops and Westlaw/Lexis research workshops. (10/01/2021)

Analysis of Result Data: The Law School met this benchmark for this assessment method, but it still strives to improve student learning of legal research. Therefore, the Law School faculty will review the content and timing of the Excellence in Legal Research Program to see if any improvements can be made. (10/01/2021)

Analysis of Result Data: The Law School does not have a specific Action for Improvement because it did not plan to use a student survey to assess this SLO. Thus, the result and any corresponding Action for Improvement are "not applicable." (10/01/2021)

Student Learning Outcomes

Assessment Methods

Results Data

Analyses of Result Data

Related Documents:

[Assessment Plan 2020-21.docx](#)

Course Level Assessment -

Achievement of this Student Learning Outcome will be evidenced by successful completion of an upper-level writing requirement.

Criterion: 80% or more of students who take an upper-level writing requirement course will successfully complete the requirement, which inherently involves sources of law, legal research tools, and citation.

Related Documents:

[Assessment Plan 2020-21.docx](#)

Assessment Cycle: 2020 - 2021

Result Type: Criterion Met

Based on review of students' semester grades in courses in which they can fulfill the upper-level writing requirement, 100% successfully completed the requirement on the first attempt. (10/01/2021)

Related Documents:

[Upper-Level Writing Requirement Policy](#)

Analysis of Result Data: The Law School met its benchmark for the assessment method, but it plans to review the course offerings so that students might have additional course choices for fulfilling the upper-level writing requirement. (10/01/2021)

Analysis of Result Data: The Law School met its benchmark for this assessment method, but it plans to explore if the Scholarly Writing Series, which is currently a three-part learning series available on TWEN, could be improved and utilized more in courses that can fulfill the upper-level writing requirement. (10/01/2021)

Legal Analysis, Reasoning & Problem-Solving - The School of Law developed an assessment cycle for its six program-wide Student Learning Outcomes. The assessment cycle has been approved by the American Bar Association (ABA) and the Texas Tech University Office of Planning & Assessment and is included in the 2020-2021 Assessment Plan. During 2020-2021, the School of Law is focusing on two of the six Student Learning Outcomes, one of which is "Legal Analysis, Reasoning & Problem-Solving" (See ABA Standard 302(b)).

Graduates will demonstrate

Class Discussions - Achievement of this Student Learning Outcome will be evidenced by class discussions in which law students demonstrate competent legal analysis, reasoning, and problem-solving.

Criterion: 80% of a representative number of students will demonstrate competent skills in legal analysis, reasoning, and problem-solving during class discussions.

Related Documents:

[Assessment Plan 2020-21.docx](#)

Assessment Cycle: 2020 - 2021

Result Type: Criterion Met

Faculty who use class discussions to assess this SLO reported that more than 90% of their students demonstrated competent legal analysis, reasoning, and problem-solving skills. (10/01/2021)

Related Documents:

[Revised Graduation Requirements Policy](#)

[Online Faculty Survey - SLOs - Fall 2020](#)

[Online Faculty Survey - SLOs Spring 2021](#)

Analysis of Result Data: The Law School met its benchmark for this assessment method, but it will continue to educate faculty on ways to effectively lead class discussions so students can improve these skills. (10/01/2021)

Analysis of Result Data: The Law School met its benchmark for this assessment method, but in 2021-22, it plans to require a "Legal Analysis" course during Fall 2021. First-year students who end up in approximately the bottom 20% of the class will be required to take the course to help them further develop their legal analysis,

<i>Student Learning Outcomes</i>	<i>Assessment Methods</i>	<i>Results Data</i>	<i>Analyses of Result Data</i>
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competent skills in legal analysis, reasoning, and problem-solving, including the following skills: (1) accurately identify the material facts, procedural history, issues on appeal, rules of law, reasoning, holding, and policy in appellate court opinions; (2) identify and describe legal issues implicated by a factual scenario; (3) identify and describe relevant legal authority applicable to identified legal issues; (4) identify and describe key rules and reasoning contained within applicable authority; (5) effectively synthesize and reconcile multiple legal authorities when applicable; (6) effectively analogize and distinguish precedent, and (7) propose reasonable resolutions to legal problems.

Outcome Status: Active
Start Date: 08/17/2020
End Date: 10/01/2021

Comprehensive Exam - Achievement of this Student Learning Outcome will be evidenced by the graduates' performance of a bar exam.
Criterion: 80% of graduates who take a bar exam will pass on the first attempt.
Related Documents:
[Assessment Plan 2020-21.docx](#)

Assessment Cycle: 2020 - 2021
Result Type: Criterion Met
 According to data published by the Law School's accrediting agency, the American Bar Association (ABA), the first-time bar passage rate for the last reporting cycle was 93.82%, and the Ultimate Bar Passage rate is 95.92% (which is second highest among all ten law schools in Texas). This result is remarkable given the adversity students encountered due to the COVID-19 pandemic and a severe winter storm that occurred around the administration of the February 2021 bar exam. (10/01/2021)
Related Documents:
[ABA Bar Passage Report 2021.pdf](#)
[Student Success Initiative Report 2020-21.docx](#)

reasoning, and problem-solving skills. The faculty revised the Law School's Graduation Requirements policy to reflect this change in the curriculum. (10/01/2021)

Analysis of Result Data: The Law School met its benchmark for this assessment method, but it plans to review its Student Success Initiative to see if the content and/or timing might be improved. This initiative was developed in Spring 2020 and was implemented in Spring 2020 and Spring 2021. It focuses on providing helpful workshops for all third-year students and providing mentorship opportunities for third-year students who are in approximately the bottom 25% of the class. (10/01/2021)

Comprehensive Exam - Achievement of this Student Learning Outcome will be evidenced by graduates' performance on the Multistate Professional Responsibility Exam (MPRE).
Criterion: 85% of December 2020 and May 2021 law graduates who report their MPRE score to the Texas

Assessment Cycle: 2020 - 2021
Result Type: Criterion Met
 Based on results provided to the Law School by the Texas Board of Law Examiners (BLE), more than 85% of December 2020 and May 2021 graduates passed the MPRE within six months of graduation. (Note: Graduates do have the opportunity to take the MPRE in early November, so those results are obviously not included in this initial result). To protect students' privacy, the specific results on on file with

Analysis of Result Data: The Law School met its benchmark for this assessment method, but it plans to review the content and timing of the MPRE workshop(s) offered to third-year students during the spring semester. (10/01/2021)

Student Learning Outcomes

Assessment Methods

Results Data

Analyses of Result Data

Board of Law Examiners will pass the comprehensive exam within six months of graduation.

Related Documents:

[Assessment Plan 2020-21.docx](#)

Embedded Assessments -

Achievement of this Student Learning Outcome will be evidenced by students' performance on embedded assignments that allow them to demonstrate competent legal analysis, reasoning, and problem-solving skills.

Criterion: Faculty will report that 80% of students demonstrate competent legal analysis, reasoning, and problem-solving skills in embedded course assignments.

Related Documents:

[Assessment Plan 2020-21.docx](#)

the Law School's Director of Assessment. (10/01/2021)

Assessment Cycle: 2020 - 2021

Result Type: Criterion Met

Faculty who assessment this SLO reported via an online survey that more than 90% of their students demonstrated competent legal analysis, reasoning, and problem-solving skills. (10/01/2021)

Related Documents:

[Online Faculty Survey - SLOs - Fall 2020](#)

[Online Faculty Survey - SLOs Spring 2021](#)

Analysis of Result Data: The Law School met its benchmark for this assessment method, but it plans to continue educating faculty on ways to incorporate effective, embedded assessments into their respective courses. (10/01/2021)

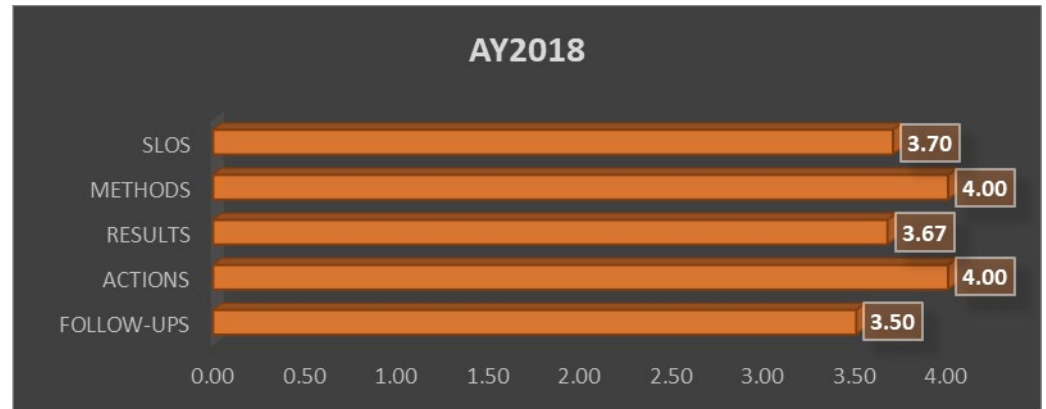
Analysis of Result Data: The Law School met its benchmark for this assessment method, but it will explore the possibility of creating a student survey to get the student perspective as to their legal analysis, reasoning, and problem-solving skills. (10/01/2021)

Texas Tech University Program Assessment Rubric Review for AY 2018-2019
School of Law – Law – Law (JD)

The following report provides a summary of degree program assessment evaluation scores derived from the TTU Program Assessment Rubric (PAR). This analysis was completed by the Office of Planning and Assessment (OPA) and provides an assessment of Student Learning Outcomes documentation. The PAR feedback reflects the substantive evaluation of individual reports by multiple reviewers.

The rubric allows four scores: (1) Initial, (2) Emerging, (3) Developed, and (4) Highly Developed. The components evaluated are Student Learning Outcomes, Assessment Methods, Results, Actions for Improvement, and Follow-Up Statements. The rating designated per component is the average of the two evaluation scores. To achieve compliance, a minimum of a 3.0 is required both for individual report elements and the overall score.

Report Element	Score	Level
Student Learning Outcomes	3.70	Developed
Assessment Methods	4.00	Highly Developed
Results	3.67	Developed
Actions for Improvement	4.00	Highly Developed
Follow-Up Statements	3.50	Developed
Overall Score	3.77	Highly Developed

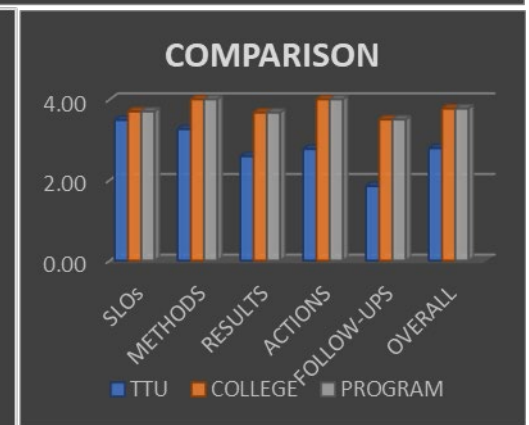
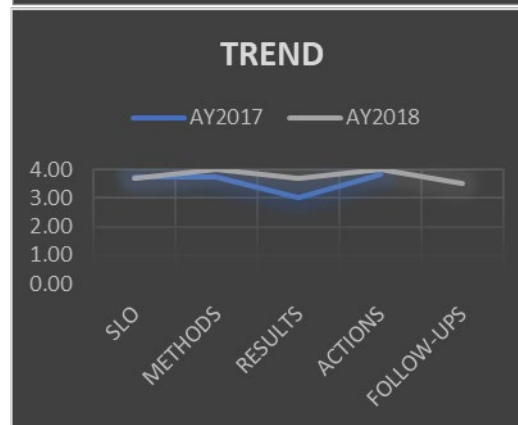


Overall

✓ **Report should be recognized as an exemplar for SACSCOC Standard 8.2.a**

Comments

Excellent report! Very comprehensive.



To discuss this report or to set up an opportunity for an in-person consultation, contact the Office of Planning and Assessment
 by phone at 806-742-1505 or by email at
 Dr. Jennifer Hughes, Managing Director - jennifer.s.hughes@ttu.edu
 Libby Spradlin, Associate Director - libby.spradlin@ttu.edu



TEXAS TECH UNIVERSITY
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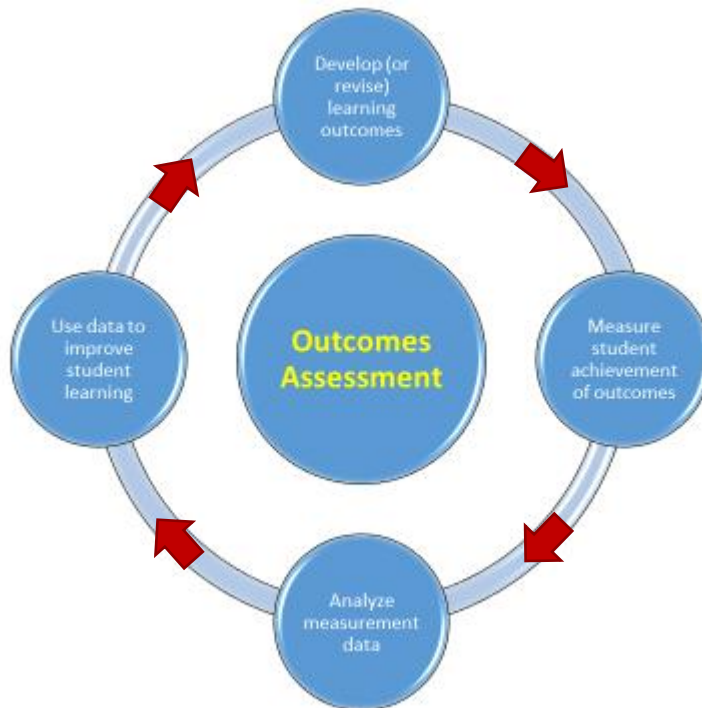
2021-2022 Academic Year

ASSESSMENT PLAN

For compliance with SACSCOC and ABA Standards

INTRODUCTION

This annual assessment plan is for the J.D. degree program at the Texas Tech University School of Law. The plan addresses the Law School’s assessment process, which includes the following steps: (1) defining student learning outcomes (SLOs) for courses, specialty tracks/concentrations, and the degree program; (2) measuring whether students are achieving the SLOs; (3) analyzing the results; and (4) using the results to “close the loop” by making any necessary changes in teaching or curriculum. This basic assessment process can be illustrated as follows:



In general, the Law School will follow an implementation cycle so that one or two highly developed program-wide SLOs are implemented and analyzed each academic year, and evidence of student learning for the outcome(s) will be collected from varied methods of assessment. The findings will be reported to the appropriate parties (*e.g.*, faculty, SACSCOC), and the data will be used to recommend changes to improve student learning, if improvement is necessary.

RELEVANT ASSESSMENT STANDARDS

The American Bar Association (ABA) is the national agency for the accreditation of professional degrees in law. The ABA Section of Legal Education and Admissions to the Bar established standards—and interpretations of the standards—as an effort to improve the competence of individuals entering the legal professional.

ABA Standard 301(b) states that a “law school shall establish and publish learning outcomes designed to achieve the objectives set forth in 301(a).” **ABA Standard 302** then requires law schools to “establish learning outcomes that shall, at a minimum, include competency in the following: (a) Knowledge and understanding of substantive and procedural law; (b) Legal analysis and reasoning, legal research, problem-solving, and written and oral communication in the legal context; (c) Exercise of proper professional and ethical responsibilities to clients and the legal system; and (d) Other professional skills needed for competent and ethical participation as a member of the legal profession.” Additionally, **Standard 314** requires a law school to “utilize both formative and summative assessment methods in its curriculum to measure and improve student learning and provide meaningful feedback to students.” And finally, **Standard 315** explains that “[t]he dean and the faculty of a law school shall conduct ongoing evaluation of the law school’s program of legal education, learning outcomes, and assessment methods; and shall use the results of this evaluation to determine the degree of student attainment of competency in the learning outcomes and to make appropriate changes to improve the curriculum.”

In addition to ABA Standards, **SACSCOC Comprehensive Standard 3.3.1.1** addresses student learning outcomes and states: “the institution identifies expected outcomes, assesses the extent to which it achieves these outcomes, and provides evidence of improvement based on analysis of the results in each of the following areas: educational programs, to include student learning outcomes.” Furthermore, **Texas Tech University Operating Policy 32.06** requires each course syllabus to include “the expected learning outcomes from the course” and “the methods of assessing those outcomes.”

LEARNING OUTCOMES FOR THE J.D. PROGRAM

Although student learning outcomes for compliance with the new ABA Standards did not have to be in place until the end of the 2017-2018 year (see ABA Managing Director’s Guidance Memo, dated June 2015), the Law School took significant strides to determine its learning outcomes. After obtaining feedback from students, alumni, and faculty, the faculty adopted J.D. student learning outcomes in February 2016. The SLOs below identify the competency in knowledge, skills, and values that the Law School desires its graduates to possess. These SLOs are also consistent with the Law School’s mission statement, which was approved by the faculty in February 2016.

During the 2021-22 academic year, the Law School faculty will be reviewing the J.D. program SLOs and revise them, as necessary.

The Law School's mission statement is as follows:

The mission of the Texas Tech University School of Law is to prepare individuals for the effective and ethical practice of law in a rapidly changing, diverse, and interconnected world; to engage in meaningful scholarship; and to foster a culture of public service.

Learning Outcome 1: Graduates will demonstrate competent knowledge and understanding of substantive and procedural law.

To demonstrate achievement of this learning outcome, graduates will:

Criterion 1: Identify and describe key legal concepts and rules in the required curriculum.

Criterion 2: Identify and describe key legal concepts and rules in the elective curriculum.

Criterion 3: Identify and describe the structure of the U.S. and Texas legal systems.

Learning Outcome 2: Graduates will demonstrate competent skills in legal analysis, reasoning, and problem-solving.

To demonstrate achievement of this learning outcome, graduates will:

Criterion 1: Accurately identify the material facts, procedural history, issues on appeal, rules of law, reasoning, holding, and policy in appellate court opinions.

Criterion 2: Identify and describe legal issues implicated by a factual scenario.

Criterion 3: Identify and describe relevant legal authority applicable to identified legal issues.

Criterion 4: Identify and describe key rules and reasoning contained within applicable authority.

Criterion 5: Effectively synthesize and reconcile multiple legal authorities when applicable.

Criterion 6: Effectively analogize and distinguish precedent.

Criterion 7: Propose reasonable resolutions to legal problems.

Learning Outcome 3: Graduates will demonstrate competent skills in legal research.

To demonstrate achievement of this learning outcome, graduates will:

Criterion 1: Identify and describe the roles and differing characteristics of sources of law, including the weight of authority.

Criterion 2: Create and implement a logical research plan that employs the appropriate tools of legal research.

Criterion 3: Use proper citation when required.

Learning Outcome 4: Graduates will demonstrate competent skills in written and oral communication.

To demonstrate achievement of this learning outcome, graduates will:

Criterion 1: Communicate effectively by employing predictive, persuasive, and operational writing techniques.

Criterion 2: Engage in effective and professional oral communication, including the delivery of an oral argument.

Learning Outcome 5: Graduates will demonstrate competent knowledge of professional and ethical responsibilities.

To demonstrate achievement of this learning outcome, graduates will:

Criterion 1: Identify and describe the applicable rules and standards governing lawyers' professionalism and ethical responsibilities.

Criterion 2: Apply knowledge of professional ethics to the resolution of identified dilemmas.

Criterion 3: Apply knowledge of professional ethics in the context of oral and written advocacy.

Criterion 4: Demonstrate professionalism through conduct consistent with the legal profession's values and standards.

Learning Outcome 6: Graduates will develop other professional skills needed for competent and ethical participation as a member of the legal profession.

To demonstrate achievement of this learning outcome, graduates will:

Criterion 1: Demonstrate leadership skills in a variety of settings.

Criterion 2: Demonstrate the ability to work cooperatively with others.

Criterion 3: Maintain civility and respect for cultural diversity.

Criterion 4: Exhibit a commitment to pro bono and public service activities.

ASSESSMENT TIMELINE FOR SEVEN-YEAR CYCLE

Following guidelines provided by the ABA, the Law School developed a seven-year assessment cycle. The assessment cycle, which appears on Page 6 of this 2020-21 plan, illustrates the timeline for collecting and analyzing data for the six J.D. student learning outcomes. The ABA reviewed this seven-year assessment cycle during its reaccreditation of the Law School in 2018. Additionally, the assessment cycle has been approved by the Managing Director of the Office of Planning & Assessment at Texas Tech University. Thus, the Law School's seven-year assessment cycle is sufficient for compliance with ABA Standards and SACSCOC 3.3.1.1. In other words, the Law School is not required to assess every outcome every year to comply with either ABA standards or SACSCOC standards.

During 2021-22, the Law School will be implementing and collecting data for Student Learning Outcome 1.

Assessment Methods: The specific assessment methods for Student Learning Outcomes 1 are set forth in Nuventive Improve. A copy of the Nuventive Improve four-column report listing the assessment methods is on file with the Director of Assessment.

EVALUATING THE ASSESSMENT PROCESS

In accordance with ABA Standard 315 and SACSCOC Standard 3.3.1.1, the Dean, the Director of Assessment, and the Assessment Committee are charged with conducting an ongoing evaluation of the assessment process at the Law School. Accordingly, they will continue to evaluate the assessment timeline and other assessment-related items to recommend any changes to the learning outcomes or assessment process.

Assessment Cycle for Student Learning Outcomes

	2016-2017	2017-2018	2018-2019	2019-2020	2020-2021	2021-2022	2022-2023
<u>Learning Outcome 1:</u> Graduates will demonstrate competent knowledge and understanding of substantive and procedural law.		●				●	
<u>Learning Outcome 2:</u> Graduates will demonstrate competent skills in legal analysis, reasoning, and problem-solving.					●		
<u>Learning Outcome 3:</u> Graduates will demonstrate competent skills in legal research.	●				●		
<u>Learning Outcome 4:</u> Graduates will demonstrate competent skills in written and oral communication.			●				●
<u>Learning Outcome 5:</u> Graduates will demonstrate competent knowledge of professional and ethical responsibilities.			●				●
<u>Learning Outcome 6:</u> Graduates will develop other professional skills needed for competent and ethical participation as a member of the legal profession.				●			



FACULTY MEETING AGENDA

Wednesday, January 20, 2021 at 4:00 p.m.

[Join January Zoom Meeting](#)

Meeting ID: 994 2648 7155, Passcode: 651854

One tap mobile: +13462487799, 99426487155#

- 1) Welcome & General Announcements (Nowlin)
 - a. Upcoming Law School events
 - b. Sharing of good news
 - c. Other announcements

- 2) Dean's Updates & Announcements (Nowlin)
 - a. Budget
 - b. February bar exam
 - c. COVID-19 health & safety protocols
 - d. COVID-19 vaccinations (Sutton)
 - e. 2020 faculty reports due February 15
 - f. Diversity initiatives (Chapman and Ross)
 - g. Additional updates

- 3) Approval of Minutes for Faculty Meeting on November 18, 2020 (Nowlin) (minutes distributed on 1/13/21)

- 4) Assessment (Humphrey)
 - a. Assessment reporting reminder
 - b. Assessment spotlight – Top Hat

- 5) Curriculum Committee – Discussion and vote on two course modality changes and one course title change (proposals distributed on 1/13/21) (Rosen)
 - a. Professional Responsibility, Benham (add online modality)
 - b. Deposition, Benham (add online modality)
 - c. Texas Practice, Christopher (change course title and add as a required course for some 2L students beginning with the incoming class of 2021)

- 6) Other Business



FACULTY MEETING AGENDA

Wednesday, March 24, 2021 at 4:00 p.m.

[Join March Zoom Meeting](#)

Meeting ID: 962 8801 7237; Passcode: 007652

One tap mobile: +13462487799, 96288017237#

- 1) Welcome & General Announcements (Nowlin)
 - a. Upcoming Law School events, including Class of 2021 Graduation on 5/15/21
 - b. Sharing of good news
 - c. Other general announcements
- 2) Approval of Minutes for Faculty Meeting on February 17, 2021 (Nowlin) (minutes distributed on 3/17/21)
- 3) Dean's Updates & Announcements (Nowlin)
 - a. 2021-22 class instruction
 - b. Additional updates
- 4) Office of Student Life Update (Chapman)
- 5) Public Interest Auction Update (B. Sherwin)
- 6) **Assessment Spotlight (Humphrey & Baldwin)**
- 7) Approval of Visiting Professor Candidate (Nowlin & Shannon) (materials forthcoming)
- 8) Rules Committee (Cochran)
 - a. Discussion and vote on revision to Exam Rescheduling Policy (proposed revision forthcoming)
 - b. Update on pending committee matters
- 9) Other Business



FACULTY MEETING AGENDA

Wednesday, January 19, 2022, at 4:00 p.m.

[Join Zoom Meeting](#)

Meeting ID: 979 6411 7314 Passcode: 232298

One tap mobile: +13462487799, 97964117314#

- 1) Welcome Back & Announcements (Nowlin)
 - a) General announcements
 - b) Sharing of good news
 - c) Other announcements
- 2) Approval of Minutes for Faculty Meeting on December 10, 2021 (Nowlin) (distributed on 1/12/22)
- 3) Spring 2022 Reminders/Updates
 - a) Health & Safety Protocols (Nowlin)
 - b) Instructors of Record – main campus guidance (Nowlin)
 - c) Student Life update (Chapman)
- 4) Update – Student Public Interest Auction (B. Sherwin)
- 5) Faculty Evaluations & Assessment
 - a) Annual Faculty Evaluation forms (Nowlin)
 - b) Assessment-related reminders (Humphrey)
 - c) Update re: revisions to J.D. Student Learning Outcomes (Humphrey)
 - d) Assessment Spotlight: Formative assessment articles (Humphrey)
- 6) Discuss the need for a volunteer for Order of the Coif and Phi Kappa Phi (Rosen)
- 7) “Personnel” Updates
 - a) Killam Chair (Nowlin)
 - b) Legal Practice (Rosen)
 - c) Reference & Education Programs Librarian (Baker)
- 8) Curriculum Committee – discuss course-coverage needs and recommendation for a visiting professor in 2022-2023
- 9) Other Business



FACULTY MEETING AGENDA

Wednesday, October 20, 2021, at 4:00 p.m.

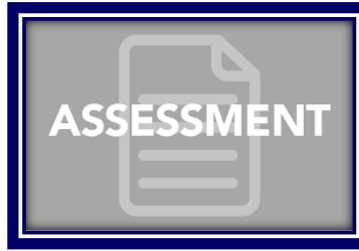
Lanier Auditorium & Zoom

[Join Zoom Meeting](#)

Meeting ID: 936 4894 9008; Passcode: 455282

One tap mobile: +13462487799, 93648949008#

- 1) Welcome & Announcements (Nowlin)
 - a) General announcements
 - b) Sharing of good news
 - c) Other announcements
- 2) Approval of Minutes for Faculty Meeting on September 15, 2021 (Nowlin) (distributed on 10/13/21)
- 3) Update from Personnel Committees
 - a) Tenure-track professor to teach Legal Practice (Rosen)
 - b) Killam Chair of Criminal Law (Shannon)
- 4) **Assessment Update & Assessment Spotlight (Humphrey & Gossett)**
- 5) Registrar's Office (Walls) – Discussion of the 2022-2023 academic calendar and the proposed 2023-24 academic calendar (both distributed on 10/13/21)
- 6) Rules Committee (Cochran) – Please see the Rules Committee Report distributed on 10/13/21) Discussion and vote on the following:
 - a) New Law School Operating Policy, “Grades for Military Personnel Ordered to Active Duty” policy (distributed on 10/13/21; see [TTU OP 34.13](#))
 - b) Repeal of the [“Skills & Ability for Law Study” policy](#) (see the faculty-adopted [J.D. Student Learning Outcomes](#))
 - c) Repeal of Appendix I of the 2017-2018 Faculty Handbook (distributed on 10/13/21; see the [Determination of Credit Hours for Coursework and Other Academic Study \(ABA Standard 310\) policy](#))
 - d) Repeal of Part VI of the 2017-2018 Faculty Handbook, “Guidelines for Open Faculty Meetings” (distributed on 10/13/21)
 - e) Repeal of Part XIII of the 2017-2018 Faculty Handbook, “Adjunct Faculty” (distributed on 10/13/21; 2021-2022 Adjunct Law Faculty Guide distributed on 10/13/21)
 - f) Revisions to the [Hooding Ceremony policy](#) (to be effective next academic year) (redline version will be distributed before the faculty meeting)
- 7) Other Business



Assessment Committee: Humphrey (Chair), Baldwin, Casto, Christopher, Keffer, Murphy, R. Sherwin, and Myhra (ex officio).

The SACSCOC annual assessment report is due to the Office of Planning & Assessment (OPA) on October 1, 2019. Following our assessment cycle, our report will address Student Learning Outcomes 4 and 5.

What Student Learning Outcome are we focusing on in 2019-2020?

Learning Outcome 6: Graduates will develop other professional skills needed for competent and ethical participation as a member of the legal profession.

To demonstrate achievement of this learning outcome, graduates will:

Criterion 1: Demonstrate leadership skills in a variety of settings.

Criterion 2: Demonstrate the ability to work cooperatively with others.

Criterion 3: Maintain civility and respect for cultural diversity.

Criterion 4: Exhibit a commitment to pro bono and public service activities.

The 2019-2020 Assessment Plan, including assessment methods and benchmarks for the criteria, will be completed by September 30, 2019, and provided to OPA.

Would you like an assessment grant?

Are you planning to use an assessment tool that requires payment, *e.g.*, an online polling tool? The Assessment Committee will be awarding a limited number of Assessment Grants for 2019-2020. Be on the lookout for more information! The deadline to submit a very short grant application will be Friday, September 13, 2019.

What about Outreach and Engagement reporting for 2018-2019?

As you know, Outreach and Engagement has been elevated as a priority in the University's new strategic plan. Consistent with the University's plan, the law school's strategic plan includes a focus on Outreach and Engagement.

You will be able to report the extent and nature of your 2018-2019 outreach and engagement activities using Raiders Engaged or Digital Measures. More information to come!

Teaching students' self-assessment

Harnessing existing processes to formalize some formative assessment
and promote deeper student learning

Student self-assessment

- Structured and guided student self-assessment is correlated with high achievement & self-regulated learning when:
 - Self-assessment is used early enough that students have an opportunity to innovate and implement new strategies before consequences attach
 - Self-assessment focuses on products & processes rather than general or global competence
 - Students' self-assessment efforts are supported by:
 - Explicit, relevant, evaluative criteria
 - Criteria are graduated rather than absolute, and
 - Work-product samples

One way to use student self-assessment

- Provide a practice problem for students to complete
- Provide a sample answer
- Have students dissect sample answer to generate the evaluative criteria, professor collaboration to provide professional-standards perspective encouraged
- Have students use generated criteria to grade own answer & then rewrite to get closer to achieving the level of performance demonstrated in the sample answer
- Faculty grades revised answers & grading documents and provides feedback if student blind spots revealed

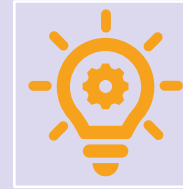
My rubric for grading self-assessments

	Complete (100%)	Incomplete (50%)	Missing (0%)
Task Completion (40%)	Used the provided rubric to self grade and completed all required fields; followed secondary instructions re locating evidence in product & generating reflections.	Self-graded without provided rubric, or incomplete rubric submitted; secondary instructions not followed.	No submission.
Self grade produced & communicated actionable information (40%)	Used the self-reflection space to identify an action to take to improve future writing.	While there is a self-reflection, there is not an statement with an action that can be taken to improve future writing.	Missing.
Followed instructions (20%)	Followed Instructions precisely.	Somewhat followed instructions.	Did not follow instructions.

References

- Andrade, H. L. [“A Critical Review of Research on Student Self-Assessment”](#) available on Frontiersin.org (accessed 05/12/2021; an update to a chapter published in the Cambridge Handbook of Instructional Feedback)
- Leah Christensen’s works on qualitative differences in reading strategies for high-performing and low-performing law students
- Lisa Blasser’s work on qualitative differences in study processes for high-performing and low-performing law students
- Jennifer Cooper’s works on meta-cognition and law students

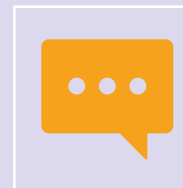
ASSESSMENT: THREE-MINUTE ESSAY



What is something we learned that you really “got” this week?



What is something that you still don't understand?



Anything else you would like to tell me.

David Thomson, Professor of the Practice and John C. Dwan Professor for
Online Learning
University of Denver Sturm College of Law

Formative Assessment in Law School With Multiple-Choice Tests

In August of 2014, after five years of study and drafting, the ABA added a new set of assessment requirements to the accreditation standards. Starting with the incoming class in the fall of 2016, ABA accredited law schools are required to “establish and publish” learning outcomes (Standard 301) addressed to a general description of the purpose and focus of legal education (Standard 302), and use both “summative and formative” assessment methods to “measure and improve” student learning and provide meaningful feedback to students (Standard 314). Although fairly common in undergraduate education, the term “formative assessment” is fairly new to most of the legal academy. Clinical and legal writing faculties have employed these assessment methods for years, but many other faculty members are new to it.

I am a member of the Board of CALI, the Center for Computer Aided Legal Instruction. In that capacity I have recently been involved in discussions around what law schools might do to meet the new ABA requirements pertaining to assessment.

One of the topics that have come up in those discussions is whether it is possible for multiple-choice tests to be formative assessment. If it were, then the addition of formative assessment to the standards would be a fairly easy thing to add to the curriculum. To answer that question, we have to first understand what formative assessment is.



The first thing to note is that it is something qualitatively different from summative assessment. The typical summative assessment is the final exam at the end of a law school course. These are particularly common to the first year courses, but are not exclusive to them, and often appear in “casebook” courses in the second and third years of law school. So if formative assessment is something different, what is it? A recent article by Joni Larson distinguishes summative and formative assessment as follows:

“Formative assessments are designed primarily to *improve* learning.... [while] Summative assessments are designed primarily to *judge* learning.” (Emphasis added).

An essential feature of formative assessment is individualized feedback provided by the teacher beyond merely a test score that measures how much the student fell short of an arbitrary standard. The feedback provided should detail what good performance looks like and explain why it is better than what the student did. Such feedback provides tools to the student that help them self-assess going forward, and has been found to foster higher levels of engagement and motivation in learning the material.

Formative assessment should be designed to monitor student learning during the course, but also to allow the teacher to monitor and modify his or her teaching practices during the pendency of course. So there is an element of formation for the teacher as well as the student.

These definitions may be somewhat helpful, but perhaps a couple of examples might help to put the definitions in the context of law school teaching. I have a colleague who teaches an upper-level large course (60ish students) and he gives a midterm that is mostly short and long answer essay format. There is a great deal of feedback given on each exam, together with a grade, which amounts to 25% of the grade for the course. Then, the professor invites each student to appeal their grade, a challenge that many accept. The appeal must be in a prescribed written format, the professor reviews each appeal, and then meets with each student to give them the result of their appeal and explain it. I believe this is the best of what we mean (in legal education) by formative assessment, and I think it is the sort of assessment the ABA is hoping to see when they visit schools and examine how well the school is meeting the requirements of Standard 314. (Not in all courses, and not all the time... but that's a question for another day.)

In contrast, a colleague at another school described an exercise in first year contracts in which she has them prepare multiple choice questions (and proposed answers) for an optional test, and submit them to her in advance of the test, which uses versions of those questions (after her edit). This is certainly an interesting exercise, and probably fun for the students. But it is not clear what formative learning the students get from the professor in that exercise (other than from their question appearing on the optional test with or without modification). And it is not clear how the professor uses this exercise for her own learning and adjustment of the course while she is teaching it. So this example does not have either of the two essential hallmarks of being a formative exercise.

Multiple-choice questions can be formative, but they have to accomplish more than merely to judge the level of learning that has been accomplished. So when a multiple-choice test provides the student after the test with detailed explanations for the correct answers (as well as the incorrect answers) it can provide some guidance for improvement of comprehension of course content. But - particularly when testing skills - multiple-choice questions are most effectively formative when there is some individualized feedback provided by the professor to the student, *and* the professor uses the information gleaned from the assessment to adjust the teaching and learning activities in the course, ideally while the course is still underway.

However, a multiple-choice test *can* do these sorts of "formative" things for a student:

A score on a multiple choice test can give the student a sense of how they are doing in retaining substantive knowledge, and depending on the question and its form, perhaps even how they are doing in developing a skill (such as legal analysis and application.)

If, when the score is received, a list of the correct answers is also provided, together with a description of why a certain question is correct, and why others are wrong, this can also be formative of learning for the student. But at the course level, to be formative such tests have to be conducted during the course (such as a midterm) so the student has an opportunity to improve their understanding before the summative (final) exam.



If all that is being taught in the typical law school classroom is content, then perhaps several low stakes multiple-choice tests, with correct answer explanations provided afterwards, can fit that definition. And of course if faculty are using such tests to identify where students are struggling – in content and skills - so they can address problems immediately in the course, well, that's further evidence that the purpose of the test was formative, for the student *and* the teacher.

But, of course, that's not all that is taught in the typical law school classroom. The much harder thing to reveal in a multiple-choice test is places where the "thinking and linking" is missing or off. (How many times have we heard students share the lament after a final exam in which they did poorly: "But I knew the material so well!!") In fact, what I am suggesting is that multiple-choice questions are not good at this (particularly ones developed *generically* by vendors rather than individual *teachers* for their *own students*), and the great temptation is to think they are, and skip over the intended benefits of formative assessment for learning and continuous improvement.

Here is an illustration of a multiple-choice test that is not formative: consider a hypothetical law professor who teaches a certain standard 1L course. That professor gives a multiple-choice midterm in the course, and provides only scores to the students. Further, the content in the midterm is no longer ever addressed or used the rest of the semester, including on the final exam. So this "midterm" is really a summative exam for a portion of the course, and it has very little formative value for the student.

The term "formative assessment" refers to something deeper and more individualized – in its best form - than the sorts of things that multiple choice questions can do for students. Its most important and effective use is in providing qualitative feedback - as opposed to just scores - that is focused on the details of the performance with tailored guidance for each student on how to improve. It seems to me that all of the automated tools provided by vendors – such “formative assessment tools” seem to be the current hot item in the law school publishing space - will inevitably fall short of the true meaning of the term "formative assessment."

Finally, as noted above, an important purpose of formative assessment is for the *teacher*, who uses evidence of student achievement to make

adjustments to the course and methods of instruction, thus creating and contributing to a cycle of continuous improvement.

Here is an example from my own teaching of Administrative Law some years ago. I have long worried about the utility of the "Review Class" - typically the last class in the semester for a "casebook" course. What often happens in those classes is that a few "gunner" students monopolize the discussion with the professor asking fairly obscure questions that the professor does not actually intend to test in the final exam. (Am I right?) But it is hard for the professor to resist the temptation to address the questions being asked - it is ostensibly the point of the review class to address questions that students have, they do not really want to give away that the question is not on the test, and they might *like* answering the more obscure (and perhaps even creative) questions that their students offer (who doesn't?). Unfortunately, what often happens is the rest of the class spends much of the review class wondering some version of: "Oh crap - I have no idea what they are talking about. *Is this going to be on the final?*"

Instead of this approach, I spent the penultimate class conducting a no-credit multiple-choice test using clickers. The test had 50 questions on it, testing knowledge and application of the central aspects of Administrative Law that we had addressed in the class (and which I planned to test on the final). The software I used had a really cool feature - I could watch their progress as they took the test, so I could immediately see how fast they were taking the test, and which parts were slowing them down. Then, at the "Review" class (the last class of the semester), I addressed myself to each question on the test, spending much less time on the ones most students got right, and more on the ones many of them struggled with. Each time, I did not just provide the correct answer, but explained why it was correct, and why the others were not, and then reviewed the administrative law principles that we had studied through the course that applied and related to those questions.

While this effort could have been more individualized, at least each student knew which questions they got right or wrong, so they could tailor the instruction to their own learning gaps as I went through the test and the topics being tested. There are better types of formative assessment, but this one I think qualifies as a *formative assessment multiple-choice test* because it did the two fundamental things they should do to be formative: 1) it provided each student with feedback for their own self-motivated improvement of their learning of the material before the summative exam, and 2) it tailored *my* teaching and summarizing of the subject (at least

on that day) based directly on the results of the assessment.
I believe that when the ABA reviews law schools for compliance with the new Standard 314, they will be looking for evidence of such formative assessments, and mere multiple-choice exams alone - even those conducted in the middle of the semester - will not be sufficient.

January 2018

Getting Up to Speed: Understanding the Connection Between Learning Outcomes and Assessments in a Doctrinal Course

Joni Larson
Indiana Tech Law School

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JONI LARSON

Getting Up to Speed: Understanding the Connection Between Learning Outcomes and Assessments in a Doctrinal Course

62 N.Y.L. SCH. L. REV. 11 (2017–2018)

ABOUT THE AUTHOR: Joni Larson is a professor of law at Indiana Tech Law School. She earned her J.D. from the University of Montana School of Law, her LL.M. from University of Florida College of Law, and her M.A. from Michigan State University.

LEARNING OUTCOMES AND ASSESSMENTS IN A DOCTRINAL COURSE

I. INTRODUCTION

Many professors are bristling over the recent changes to American Bar Association (ABA) Standards 302¹ and 314.² Commentary runs from “I don’t understand what a learning outcome is” to “isn’t the final exam enough of an assessment?” to “how long will we need to teach to the ABA standard?” Some professors may be resistant, if they are honest, merely because learning outcomes and assessments have not been a part of the law school culture and are not well understood.

Is the direction taken by the ABA a good one, given the loud clamoring for a need to change legal education?³ What are learning outcomes? Why are they important? What are assessments? Are assessments needed? Do they relate to learning outcomes?

Let us start by considering a traditional law school course. The content to be covered is predetermined and announced in the syllabus handed out before classes begin. The professor works through the material at a pace designed to cover all the topics before the term ends. The goal is to cover the material; the time allocated to each topic is relatively fixed. Determining if students are learning and able to apply the content has never been the focus, or at least not the primary focus. It has been the students’ job to “get” the material and keep up.⁴

But what if the focus were flipped?⁵ What if time became the variable and learning the constant? If students have sufficiently mastered an area of the law to be

1. Standard 302 is titled “Learning Outcomes”:

A law school shall establish learning outcomes that shall, at a minimum, include competency in the following: (a) [k]nowledge and understanding of substantive and procedural law; (b) [l]egal analysis and reasoning, legal research, problem-solving, and written and oral communication in the legal context; (c) [e]xercise of proper professional and ethical responsibilities to clients and the legal system; and (d) [o]ther professional skills needed for competent and ethical participation as a member of the legal profession.

ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS § 302 (2017) [hereinafter ABA STANDARDS].

2. Standard 314 provides: “A law school shall utilize both formative and summative assessment methods in its curriculum to measure and improve student learning and provide meaningful feedback to students.” *Id.* § 314.
3. See, e.g., BRIAN Z. TAMANAHA, *FAILING LAW SCHOOLS*, at ix–xiii (Chi. Series in Law & Soc’y, 2012) (examining how the U.S. legal system is at risk economically if legal education is not reformed); Margaret Martin Barry, *Practice Ready: Are We There Yet?*, 32 B.C. J.L. & Soc. JUST. 247, 254–56 (2012) (discussing certain pressures placed on law schools to reform teaching approaches to produce practice-ready lawyers at graduation); Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34, 42–52, 57–62 (1992) (noting the difference between “practical” and “impractical” legal scholarship and arguing the necessity for law schools to reform legal education by hiring a balance of “practical” and “impractical” legal scholars).
4. See Joan Hawthorne, *Does Assessment Make Colleges Better? Let Me Count the Ways*, CHRON. HIGHER EDUC. (Aug. 19, 2015), <http://www.chronicle.com/article/Does-Assessment-Make-Colleges/232461> (asserting that, prior to engaging in assessments, higher education was about “what professors professed,” and the “responsibility for learning [the material] was on the student”).
5. See *id.* (“Rather than plan a class by choosing a text and then dividing the semester into segments corresponding with chapters, we recognized that learning might be better achieved if we named what students should get from a class, figured out how we’d like to see them demonstrate that learning, and

able to do something with the information, the professor does not need to allocate more class time to the topic.⁶ If they have not, the professor can spend more time on that material. However, the professor will know if students understand the material, and are able to do something with it, only by checking in with them. And this is where learning outcomes⁷ and assessments⁸ come into the picture.

I begin by discussing the foundational information, addressing what a “learning outcome” is in Part II and what an “assessment” is in Part III. Then, in Part IV, I discuss a variety of methods by which assessments can seamlessly and effectively be incorporated into a course and used to determine skill level.

II. LEARNING OUTCOMES

The ABA requires law schools to establish learning outcomes.⁹ A learning outcome describes how students will use information, with focus on what they can *do* with what they have learned.¹⁰ Learning outcomes can be designed for different program levels.¹¹ For example, they may be designed for the law school as an organization: Graduates should be able to write persuasively, think critically, and conduct legal research. Learning outcomes may be based on the student’s year: What should a first-year student know and be able to do? A second-year student?

Other learning outcomes focus on expectations within a course: What will students be able to do with what they have learned in the course? Arguably, course-level learning outcomes will inform the higher-level learning outcomes, as the

structured the semester to prepare students for doing that demonstration. We had to think about what students would do rather than what we’d say.”).

6. See William G. Spady, *Organizing for Results: The Basis of Authentic Restructuring and Reform*, EDUC. LEADERSHIP, Oct. 1988, at 4, 5–6 (“Differences in students’ aptitudes and abilities will be reflected in the time needed to reach given outcomes rather than their success on those outcomes.”).
7. The term “learning outcomes” refers to “what learners can actually do with what they know and have learned—they are the tangible application of what has been learned.” WILLIAM G. SPADY, AM. ASS’N OF SCH. ADM’RS, OUTCOME-BASED EDUCATION 2 (1994).
8. “Assessment” refers to the process of periodically checking in with students to ensure that they can in fact perform the objectives set out in the learning outcomes. See M.J. Bezuidenhout & H. Alt, *Assessment Drives Learning: Do Assessments Promote High-Level Cognitive Processing?*, 25 S. AFR. J. HIGHER EDUC. 1062, 1064 (2011).
9. ABA STANDARDS, *supra* note 1, § 302. Other professional skills, as identified in Standard 302, are defined as including “interviewing, counseling, negotiation, fact development and analysis, trial practice, document drafting, conflict resolution, organization and management of legal work, collaboration, cultural competency, and self-evaluation.” *Id.* § 302-1.
10. SPADY, *supra* note 7.
11. PAT HUTCHINGS, NAT’L INST. FOR LEARNING OUTCOMES ASSESSMENT, WHAT NEW FACULTY NEED TO KNOW ABOUT ASSESSMENT 2–3 (2011), <http://www.learningoutcomeassessment.org/documents/ABfaculty.pdf>. Hutchings identifies the institutional level, the program or department level, and the classroom level. *Id.* See also Kathleen A. Fitzpatrick, *Restructuring to Achieve Outcomes of Significance for All Students*, EDUC. LEADERSHIP, May 1991, at 18, 18–19 (discussing how to design a curriculum around defined learning outcomes).

LEARNING OUTCOMES AND ASSESSMENTS IN A DOCTRINAL COURSE

higher-level learning outcomes must be constructed from what occurs in the individual courses. Accordingly, the initial focus should be with course-level learning outcomes.

While defining learning outcomes is fairly straightforward, actually creating them can seem overwhelming. This is particularly true because, up to this point, most professors' focus has been on course content and coverage, as opposed to students' use of the information. But it is not an insurmountable project, and some may even find the process challenging, enlightening, and worthwhile.

The process begins with what the professor knows—the main subject matter areas she covers during the course—and asks why those areas are important for students to know and understand. Having mastery over course content, a professor should easily be able to answer this question.

The next step is to connect the professor's teaching goals (and the reason for those goals) to the student's learning. The professor must first shift her focus from what she intended to teach to what content the student has learned. I use a Bike Riding 101 course in Figure 1 for illustration purposes.

Figure 1

Professor covers:	Student learns:
The history of the bike: how it was developed over time in response to a need for cost effective and efficient transportation.	How the history of the bike informs its current construction and use.
Mechanics: bike construction, maintenance, and alterations.	Issues related to maintenance and ownership of a bike.
Current uses: exploration of the variety of uses of the bike such as pedicabs, mountain biking, and racing.	The ways in which the bike is currently used in society.

But identifying what the student is expected to learn is not the end of the process. Nor is it enough for students to do well on an exam that tests their knowledge of the information delivered by the professor. One more step is needed: the one that moves learning beyond the current system.

A learning outcome is not merely a “goal” or a test of knowledge. It encompasses the *actions* students should be able to perform to *demonstrate* they have learned the material. This difference between a learning outcome and a goal is represented in the structure of the learning outcome. A learning outcome must be a statement about the student actually *doing*, not just *knowing*.¹² Accordingly, a well-designed learning outcome will have a “demonstration” or action verb—a verb that captures the expectation of a student using the course content to do something, such as to explain, analyze, evaluate, or compute.¹³ Figure 2 gives a few examples of goal-oriented words versus action-oriented verbs.

12. Hawthorne, *supra* note 4 (“[I]n an era of Wikipedia and smartphones, ‘knowing’ doesn’t seem all that crucial compared with doing.”); SPADY, *supra* note 7 (“[O]utcomes involve actual doing, rather than just knowing or a variety of other purely mental processes . . .”).

13. SPADY, *supra* note 7.

Figure 2

Knowing (Goal-oriented)	Doing (Action-oriented)
Define	Describe
State the rule of	Explain
Recite	Create
Understand	Design
Remember	Apply

We can see, in Figure 3, how this shift from *knowing* to *doing* could be demonstrated in the Bike Riding 101 course.

Figure 3

Professor covers:	Student learns:	Student can (the outcome):
The history of the bike: how it was developed over time in response to a need for cost effective and efficient transportation.	How the history of the bike informs its current construction and use.	Explain how the history and development of the bike led to its current construction.
Mechanics: bike construction, maintenance, and alterations.	Issues related to maintenance and ownership of a bike.	<ul style="list-style-type: none"> • Oil a chain. • Change a tire. • Tune up a gear shift. • Prepare a maintenance schedule.
Current uses: exploration of the variety of uses of the bike such as pedicabs, mountain biking, and racing.	The ways in which the bike is currently used in society.	<ul style="list-style-type: none"> • Ride a bike. • Propose an alteration to the current construction of the bike so it could be adapted to a new use.

Finally, a learning outcome goes further than merely specifying the subject matter to be learned. It incorporates a reference to the knowledge and skills the student needs as proof of having achieved the outcome. In other words, an outcome includes a description of what students should (1) know and (2) be able to do to demonstrate that competence, as well as the context in which the competence should be demonstrated.

The professor may want to develop short-term outcomes, such as what students are expected to be able to do with a piece of information or specific small topic or with information presented on a specific day. Or the focus may be on medium-term outcomes, such as what students are expected to be able to do based on a major topic covered during the course. Finally, long-term, course, or exit outcomes will address what students are expected to be able to do with the information when they complete the course or, for those with more far-reaching goals, what students are expected to be able to do with the information in the student’s law practice. Thus, learning outcomes require deep thinking about how the law looks when it is being applied.

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The focus on *doing* is a logical progression based on what law students are training to do: practice law. The student must not only know and understand the law, but also be able to apply that knowledge.¹⁴ The current hiring environment for law students suggests an assessment, or skills-based, approach will better position graduates for practice.¹⁵ Those who have attained and can demonstrate they have attained the greatest number of skills, including the ability to think critically,¹⁶ can hit the ground running. They have the knowledge and skills to be productive and effective lawyers from the beginning of their careers. One academic explained the process of learning as follows:

Deep learning occurs when students are able to consider information or ideas from different viewpoints to solve problems, use decision-making skills to arrive at conclusions, can make applications in varying contexts, and use initiative to explore new knowledge. To do this, students have to use the evaluative and creative (or analysis and synthesis) cognitive functions which form the highest levels of the taxonomy of learning.¹⁷

This perspective can be demonstrated by analogy to other skills-based activities. Those who want to play the piano must be able to read music and understand where the notes are on the piano. But that is not enough. Nor is listening to their instructor play the piano. They must sit down at the keyboard and actually hit the proper keys, information found on the sheet music.

Similarly, aspiring football players must do more than watch film clips, memorize plays, and track the movements of those who are more skilled at the game. They must get out on the field and see what it is like to actually run a play with their teammates

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14. ROY KILLEN, *TEACHING STRATEGIES FOR QUALITY TEACHING AND LEARNING* 4 (3d ed. 2010) (“High-quality learning in any context has occurred when . . . [l]earners are able to apply knowledge to solve problems. For this to occur, learners must not only know and understand—they must also be able to do things with their knowledge.”).
 15. See ALEXA Z. CHEW & KATIE ROSE GUEST PRYAL, *BRIDGING THE GAP BETWEEN LAW SCHOOL AND LAW PRACTICE* 4 (2015), <http://law2.wlu.edu/deptimages/externship%20program/bridgingthegap.pdf> (describing the gap between what law students learn and what legal employers expect from novice attorneys, and presenting strategies to help bridge that gap); LEXISNEXIS, *WHITE PAPER: HIRING PARTNERS REVEAL NEW ATTORNEY READINESS FOR REAL WORLD PRACTICE* (2015), https://www.lexisnexis.com/documents/pdf/20150325064926_large.pdf (“[Ninety-five percent] of hiring partners and associates in a recent survey believe recently graduated law students lack key practical skills at the time of hiring. Law schools are presented with a great opportunity to improve upon the employment prospects of their graduates by focusing on certain practical skills that law firms most desire.”); Neil W. Hamilton, *Changing Markets Create Opportunities: Emphasizing the Competencies Legal Employers Use in Hiring New Lawyers (Including Professional Formation/Professionalism)*, 65 S.C. L. REV. 567, 568 (2014) (analyzing research on the competencies that legal employers and clients look for in new lawyers, and underscoring the importance of utilizing a skills-based approach in law school to develop those competencies); Susan C. Wawrose, *What Do Legal Employers Want to See in New Graduates?: Using Focus Groups to Find Out*, 39 OHIO N.U. L. REV. 505, 522 (2013) (recommending changes to law school curricula to develop skills desired by employers).
 16. While there is a lot of debate about what constitutes critical thinking, for the purposes of this discussion, critical thinking means the ability to perform at the highest levels of Bloom’s Taxonomy (discussed *infra*).
 17. Bezuidenhout & Alt, *supra* note 8, at 1074 (citation omitted).

against an opponent. In the same manner, law students must not only know the rules of civil procedure, but also understand if and how those rules can be used to solve a client's problem.

III. ASSESSMENT

Once she has created a learning outcome, the professor must determine if or when the outcome (or a step along the way to a learning outcome) has been achieved.¹⁸ An assessment follows the implementation of a learning outcome and has two feedback loops.¹⁹ First, students are given the opportunity to consider what they have learned, demonstrate their knowledge, and receive useful feedback about their knowledge and skill level.²⁰ Second, the professor is given the opportunity to consider what students have demonstrated and determine if they have sufficiently achieved the learning outcome before moving to new information.²¹ Learning outcomes can be further understood in light of what an assessment must do. A learning outcome must identify

18. HUTCHINGS, *supra* note 11.

19. As with learning outcomes, each law school is now required to use assessments. Criterion 4B of the Higher Learning Commission, titled "Teaching and Learning: Evaluation and Improvement," focuses on this assessment requirement and provides, in part:

The institution demonstrates a commitment to educational achievement and improvement through ongoing assessment of student learning.

1. The institution has clearly stated goals for student learning and effective processes for assessment of student learning and achievement of learning goals.
2. The institution assesses achievement of the learning outcomes that it claims for its curricular and co-curricular programs.
3. The institution uses the information gained from assessment to improve student learning.
4. The institution's processes and methodologies to assess student learning reflect good practice, including the substantial participation of faculty and other instructional staff members.

HLC Policy: Policy Title: Criteria for Accreditation, HIGHER LEARNING COMMISSION, <http://www.hlcommission.org/Policies/criteria-and-core-components.html> (last updated June 2014). Standard 315, titled "Evaluation of Program of Legal Education, Learning Outcomes, and Assessment Methods" provides:

The dean and the faculty of a law school shall conduct ongoing evaluation of the law school's program of legal education, learning outcomes, and assessment methods; and shall use the results of this evaluation to determine the degree of student attainment of competency in the learning outcomes and to make appropriate changes to improve the curriculum.

ABA STANDARDS, *supra* note 1, § 315.

20. HUTCHINGS, *supra* note 11, at 2.

21. Bezuidenhout & Alt, *supra* note 8 (asserting that one of the purposes of assessment is to "illustrate to [students] their progress and ensure that a proper standard has been achieved before they progress to a next level"); Gerald F. Hess, *Listening to Our Students: Obstructing and Enhancing Learning in Law School*, 31 U.S.F. L. REV. 941, 944-45 (1997); *see also* CIARA O'FARRELL, DUBLIN INST. OF TECH., ENHANCING STUDENT LEARNING THROUGH ASSESSMENT, <http://www.avondale.edu.au/Departments/Learning-and-Teaching/Enhancing-Student-Learning-through-Assessment-A-Toolkit-Approach.pdf> (last visited Jan. 24, 2018) (providing an overview of the purposes of assessment and how assessors can best utilize assessment).

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an observable and measureable action to be taken by students.²² If it does not meet this criterion, it is probably not a valid learning outcome.²³ Each assessment can be either formative or summative.²⁴ Formative assessments are designed primarily to help students improve knowledge construction during the term by providing feedback on progress and identifying gaps in learning.²⁵ They facilitate and enhance ongoing learning. A formative assessment can be used for many purposes:

- To determine what students know, understand, and can do
- To inform students of weaknesses in their performance and how to improve
- To illustrate to [students] their progress and ensure that a proper standard has been achieved before they progress to a next level
- To provide a means for certification regarding the standard of performance
- To serve as a promotion technique
- To indicate to students areas of importance in the learning material
- To serve as motivation for students
- To measure the effectiveness of teaching; thus serving as leverage for improvement in education²⁶

More specifically, multiple ongoing formative assessments give students the opportunity to learn more doctrine at a deeper level and develop the skills to make use of that knowledge.²⁷

Using the analogies discussed earlier, a formative assessment of the aspiring piano player may assess the student's ability to play a scale, sight-read a piece of

22. Am. Ass'n of Law Libraries, *Archived: Writing Learning Outcomes*, AALL, <https://www.aallnet.org/Archived/Education-and-Events/cpe/outcomes.html> (last visited Jan. 24, 2018).

23. *See id.*

24. ABA STANDARDS, *supra* note 1, § 314 (requiring a law school to “utilize both formative and summative assessment methods in its curriculum to measure and improve student learning and provide meaningful feedback to students”).

25. Carol Springer Sargent & Andrea A. Curcio, *Empirical Evidence that Formative Assessments Improve Final Exams*, 61 J. LEGAL EDUC. 379, 381–83 (2012) (asserting that formative assessments providing students with feedback throughout the semester enhance student learning and performance); Harry Torrance, *Formative Assessment at the Crossroads: Conformative, Deformative and Transformative Assessment*, 38 OXFORD REV. EDUC. 323, 324 (2012) (Eng.) (explaining that formative assessment is intended to “provide feedback to both students and teachers on student progress and what more might be done to facilitate such progress”). ABA Interpretation 314-1 states: “Formative assessment methods are measurements at different points during a particular course or at different points over the span of a student’s education that provide meaningful feedback to improve student learning.” ABA STANDARDS, *supra* note 1, § 314-1.

26. Bezuidenhout & Alt, *supra* note 8, at 1064–65.

27. *See* Sargent & Curcio, *supra* note 25, at 395; *see also* O’FARRELL, *supra* note 21 (noting that “[b]oth deep and surface learning have a place in assessment” and should help students develop “a wide range of transferable skills and competencies”).

music, or use good hand position when playing. For the football player, it may assess the student's ability to throw a good spiral pass, run sprints, or determine which play would be optimal for a particular situation.

Summative assessments are designed primarily to judge cumulative learning.²⁸ Final exams and the bar exam are examples of summative assessments. Of course, by this point, there is little opportunity to provide useful feedback to students about how well they understand and apply the course information. If either a student or a professor is incorrect about the level of learning in the course, little can be done. To go back to the analogies used previously, a summative assessment could be a concert performance of a piece of music or a performance in the championship football game.

IV. METHODS FOR INCORPORATING ASSESSMENTS

When assessments are treated as a compliance issue by the faculty—check the box—they do little to improve student learning.²⁹ When they are intentionally and purposefully chosen to assess a specific demonstration of skill or ability, they inform both the professor and the student whether the skill or ability level is as believed. So a professor wanting to understand the skill level of her students should actively engage in the process of learning what her students know, in much the same way professors expect students to actively engage in the process of understanding the material.

A. Skills Taxonomy

One way of approaching assessments is through the use of a taxonomy. “A taxonomy is a classification scheme that orders . . . phenomena hierarchically.”³⁰ Items higher on the list are more complex and subsume items at the lower level.³¹ It is like a ladder. Students begin at the lowest level. When they master that level, they move up to the next, and the next, until they reach the highest level.³²

28. See Sargent & Curcio, *supra* note 25, at 381. ABA Interpretation 314-1 states: “Summative assessment methods are measurements at the culmination of a particular course or at the culmination of any part of a student’s legal education that measure the degree of student learning.” ABA STANDARDS, *supra* note 1, § 314-1.

29. HUTCHINGS, *supra* note 11, at 3 (“Where assessment is treated as a bureaucratic task, undertaken to satisfy external requirements, impact in the classroom is unlikely.”); Erik Gilbert, *Does Assessment Make Colleges Better? Who Knows?*, CHRON. HIGHER EDUC. (Aug. 14, 2015), <http://www.chronicle.com/article/Does-Assessment-Make-Colleges/232371>; see also THOMAS R. GUSKEY, OUTCOME-BASED EDUCATION AND MASTERY LEARNING: CLARIFYING THE DIFFERENCES 14 (1994) (“The finest list of outcomes in the world, even if accompanied by valid assessment tools, represents a wish list at best. It will have little impact on student learning in the absence of effective instructional practices. At the same time, it is essential that highly effective instructional strategies be paired with a thoughtfully planned curriculum.” (citation omitted)).

30. DAVID H. JONASSEN & BARBARA L. GRABOWSKI, HANDBOOK OF INDIVIDUAL DIFFERENCES, LEARNING, AND INSTRUCTION 6 (Routledge 2011) (1993).

31. *Id.*

32. *Id.*

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Bloom's Taxonomy of Cognitive Objectives³³ is a skills-based taxonomy, specifically designed to establish whether learners have attained acceptable skills targeted in learning outcomes.³⁴ The lowest skill levels are knowledge and basic comprehension.³⁵ From there, students move up through the levels, with each new level incorporating the skills required at the lower levels and adding more demanding intellectual behaviors.³⁶ Because it informs the process by which students acquire increasingly refined skills,³⁷ the taxonomy provides the perfect framework around which learning outcomes and assessments can be created.³⁸

The level of the taxonomy will inform the level of *doing* to be assessed. Is the professor assessing whether the student can demonstrate basic content knowledge? Is the professor assessing whether the student can apply specific rules to a fact pattern? Or, if students are sufficiently progressed in their learning, is the professor assessing whether they can select the correct rule from the many learned and use it to solve a problem?

33. See generally A COMM. OF COLL. & UNIV. EXAM'RS, TAXONOMY OF EDUCATIONAL OBJECTIVES (Benjamin S. Bloom ed., 1956) (providing an overview of Bloom's Taxonomy of Cognitive Objectives).

34. See *id.*; see also JONASSEN & GRABOWSKI, *supra* note 30, at 7–8 (discussing Bloom's Taxonomy of Cognitive Objectives); Thomas R. Guskey, *Closing Achievement Gaps: Revisiting Benjamin S. Bloom's "Learning for Mastery"*, 19 J. ADVANCED ACADS. 8, 10–21 (2007) (discussing Bloom's contributions in the area of assessing student learning in the classroom). Bloom used "outcomes" to describe the mastery learning process, or the intended results from the process of teaching and learning. Guskey, *supra*, at 12–17. He also intended that formative assessment be a part of the process. *Id.* at 12.

Bloom saw dividing the material to be learned into units and checking on students' learning with a test at the end of each unit as useful instructional techniques. He believed, however, that the tests used by most teachers did little more than show for whom the initial instruction was or was not appropriate. If, on the other hand, these checks on learning were accompanied by a *feedback and corrective* procedure, they could serve as valuable learning tools. That is, instead of using these checks solely as evaluation devices marking the end of each unit, Bloom recommended they be used to diagnose individual learning difficulties (feedback) and to prescribe specific remediation procedures (correctives)

With the feedback and corrective information gained from a formative assessment, each student has a detailed prescription of what more needs to be done to master the concepts or desired learning outcomes from the unit.

GUSKEY, *supra* note 29, at 9–11.

35. A COMM. OF COLL. & UNIV. EXAM'RS, *supra* note 33, app. at 201–03.

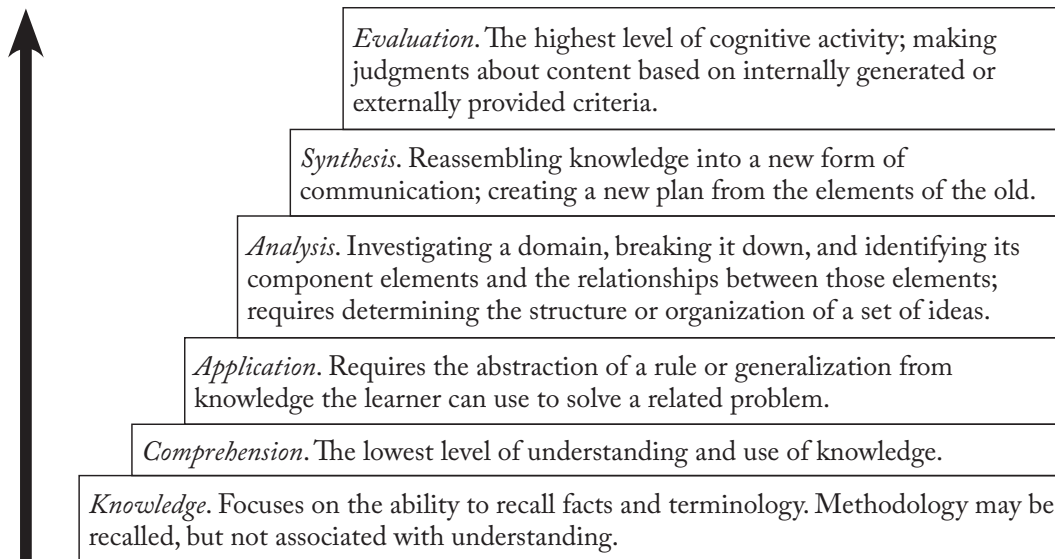
36. Bezuidenhout & Alt, *supra* note 8, at 1066–67; see also FARZANA SULTANA, AN INITIAL STUDY OF A METHOD FOR INSTRUCTING EDUCATORS ABOUT THE REVISED TAXONOMY 12–13 (2010) (discussing Bloom's six different levels of objectives). Others have modified, updated, or expanded Bloom's Taxonomy. For example, see David R. Krathwohl, *A Revision of Bloom's Taxonomy: An Overview*, 41 THEORY INTO PRAC. 212, 212–15 (2002).

37. A COMM. OF COLL. & UNIV. EXAM'RS, *supra* note 33, at 38–43.

38. See Bezuidenhout & Alt, *supra* note 8, at 1066–67.

Bloom's taxonomy levels, arranged from lowest to highest, are set out in Figure 4³⁹:

Figure 4



Using the bike course scenario, starting from the bottom and working upward, the focus of an assessment may be the following:

Knowledge. Can the student identify each part of the bike and explain how that part is necessary to the operation of the bike?

Comprehension. Can the student explain how the bike developed into the form it exists in today?

Application. Can the student demonstrate how a bike could be used in a new transportation setting?

Analysis. Can the student explain the bike as a transportation vehicle by comparing and contrasting it to cars and trains?

Evaluation and synthesis. Can the student devise a new purpose for a bike or alter the design of a bike so that it can serve a new purpose?

Note that use of the Socratic method falls in the low- to mid-level of the taxonomy. And, to the extent it could be considered an assessment, it evaluates only the student called on to answer the professor's questions. Accordingly, while there is nothing wrong with using the Socratic method as a teaching tool, professors who use it should be honest about the skill level they are expecting from the called-on student

39. JONASSEN & GRABOWSKI, *supra* note 30, at 7–8; *see also* Bezuidenhout & Alt, *supra* note 8, at 1066–67 (discussing the original and revised Bloom's Taxonomy); Michael T. Gibson, *A Critique of Best Practices in Legal Education: Five Things All Law Professors Should Know*, 42 U. BALT. L. REV. 1, 6–12 (2012) (providing an overview of Bloom's six levels of learning).

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and the fact that it does not develop skills higher on the taxonomy.⁴⁰ The professor misses an opportunity to adequately prepare students for the practice of law by not requiring them to engage in the higher cognitive levels of critical thinking, such as making decisions based on analysis, synthesizing different elements to create something new, or applying knowledge in various contexts.⁴¹

Similarly, professors who design their class around giving lectures and covering appellate court cases should understand that this is only one approach to teaching content, one that fails to develop any of the skills at the mid- to upper-end of the taxonomy:⁴²

[I]t is necessary to not simply show students past examples of high distinction quality work, as that gives them neither information nor skills on how to achieve that level of work. It is comparable to admiring an Ikea kitchen in the showroom and then having all the components sitting at home with no instruction booklet and no Allen key: success is highly unlikely! The other limitation of using an exemplar as a passive, rather than an active, teaching

40. See Robin A. Boyle, *Employing Active-Learning Techniques and Metacognition in Law School: Shifting Energy from Professor to Student*, 81 U. DET. MERCY L. REV. 1, 1–3 (2003) (“[M]ost students do not learn well [through the Socratic method] and would learn better if they were engaged in truly active learning.”); Jennifer Howard, Essay, *Learning to “Think Like a Lawyer” Through Experience*, 2 CLINICAL L. REV. 167, 172–75 (1995).

41. Bezuidenhout & Alt, *supra* note 8, at 1063.

42. ROBERT CANNON & DAVID NEWBLE, *Teaching in Large Groups*, in A HANDBOOK FOR TEACHERS IN UNIVERSITIES AND COLLEGES: A GUIDE TO IMPROVING TEACHING METHODS 58–86 (RoutledgeFalmer 4th ed. 2000) (1989); Lucy A. Goodson, *Teaching and Learning Strategies for Complex Thinking Skills*, in 1 ANNUAL PROCEEDINGS OF SELECTED RESEARCH AND DEVELOPMENT PAPERS PRESENTED AT THE NATIONAL CONVENTION OF THE ASSOCIATION FOR EDUCATIONAL COMMUNICATIONS AND TECHNOLOGY 164, 164–68 (Margaret Crawford & Michael Simonson eds., 2000) (“Teachers who provide ready-made rules and generalizations for students to memorize are following practices that interfere with the development of thinking skills.” (citation omitted)); Bezuidenhout & Alt, *supra* note 8, at 1063; Andrea Revell & Emma Wainwright, *What Makes Lectures ‘Unmissable’? Insights into Teaching Excellence and Active Learning*, 33 J. GEOGRAPHY HIGHER EDUC. 209, 209–10 (2009); George C. Thornton III & Jeanette N. Cleveland, *Developing Managerial Talent Through Simulation*, 45 AM. PSYCHOLOGIST 190, 196 (1990); David A. Whetten & Sue Campbell Clark, *An Integrated Model for Teaching Management Skills*, 20 J. MGMT. EDUC. 152, 156 (1996) (“[L]ecturing is an effective way to transfer facts, by presenting a wide variety of information in a relatively short period of time. However, students retain less of this material in the long run than they would if they were more highly involved in the learning process.” (citations omitted)); Sue Stewart Wingfield & Gregory S. Black, *Active Versus Passive Course Designs: The Impact on Student Outcomes*, 81 J. EDUC. FOR BUS. 119, 120 (2005) (“*Passive learning* emphasizes learning conceptual knowledge by focusing on facts and theoretical principles.”); Graham Biggs, *Lectures Don’t Work, But We Keep Using Them*, TIMES HIGHER EDUC. (November 21, 2013), <https://www.timeshighereducation.com/news/lectures-dont-work-but-we-keep-using-them/2009141.article> (“For some educational goals, no alternative has ever been discovered that is less effective than lecturing, including, in some cases, no teaching at all.”). “The professor processes the material, organizes it, shapes it into information that he then transmits to the student.” Joni Larson, *To Develop Critical Thinking Skills and Allow Students To Be Practice-Ready, We Must Move Well Beyond the Lecture Format*, 8 ELON L. REV. 443, 447 (2016); CANNON & NEWBLE, *supra*; Bezuidenhout & Alt, *supra* note 8, at 1063. Any lecture-based format of instruction lacks student engagement and “doing,” and “[n]o matter how engaging, entertaining, clear, or well-constructed a lecture is, the student receiving the lecture is passively receiving information.” Larson, *supra*; Revell & Wainwright, *supra*, at 210–11 (“[E]mpirical research has shown that even in the most interesting lecture, attention levels naturally tend to drop (often dramatically) after the first 20 minutes of presentation.”).

strategy is that students will tend to use it as a template. This works against the development of in-depth critical and creative thinking by students.⁴³

Nothing requires a professor to use class time to “cover the cases.” The professor can choose to do something different and still have students learn. While students will still be expected to read and understand cases (which they should be able to do effectively on their own relatively early in law school), the focus of class time can be on students demonstrating their ability to use that information. In other words, the student’s *doing* and the assessing of that *doing* can become a main focus of classroom time. The perception that a professor must allocate class time between teaching and assessing is based on previous teaching methods. An assessment need not be in addition to what she is teaching. When used properly and effectively, an assessment becomes a seamless part of the learning process.

With the taxonomy as a guide, the professor can intentionally craft a learning process that assists students in moving from the lowest level of the taxonomy to the highest level, or at least the highest that reasonably can be expected. The professor can focus on how she would like students to demonstrate their learning and structure the course to prepare students for carrying out that demonstration. In other words, the professor focuses on what students will do rather than what she will say.⁴⁴ Moreover, skill development requires practice; the students need time to engage with the material in ways that extend beyond reading the assignment, and class time can be used for that purpose.⁴⁵

Returning to the earlier analogies, which piano players are developing better skills: the ones who only study what the masters have accomplished or the ones who can play the masters’ works with technical precision and emotional understanding? Which football players are acquiring higher-level skills: the ones who review the plays their coach called in a previous game or the ones who must rely on what they have learned to anticipate what the next play will be?

1. *Taxonomy Assessment Options*

The possibilities for assessments are only limited by the professor’s ability to think creatively at each level of the taxonomy.⁴⁶ The lower end of the taxonomy requires “near transfer” of skills—the learner is expected to apply knowledge and skills in situations similar to the context in which the knowledge was learned. The higher end of the taxonomy requires “far transfer” of skills—the learner must develop

43. Sonia Walker & Julia Hobson, *Interventions in Teaching First-Year Law: Feeding Forward to Improve Learning Outcomes*, 39 *ASSESSMENT & EVALUATION HIGHER EDUC.* 326, 328 (2014).

44. Hawthorne, *supra* note 4.

45. Walker & Hobson, *supra* note 43, at 329.

46. See Hawthorne, *supra* note 4 (“There are lots of kinds of doing.”).

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connections to context that differ in some manner from the initial context in which the information was learned.⁴⁷

To keep things manageable, at least at the beginning, the number of categories can be reduced to three broad categories, focusing on the lowest level, a mid-level, and the highest level:

- Developing a knowledge base
- Demonstrating practical applications
- Transferring learning to new situations

This list is by no means exhaustive. Nor is it a suggestion that every class should incorporate every type of assessment. Rather, each professor might consider adding one or two assessments beyond what she is currently doing or trying a new assessment that might better evaluate a particular skill.⁴⁸

Using the simplified list, Figure 5 provides some examples.

Figure 5

Developing a Knowledge Base	Demonstrating Practical Applications	Transferring Learning to New Situations
Successfully complete a quiz (either prior to or during class) about rules, definitions, terms.	Answer a professor-prepared hypothetical.	Draft a hypothetical.
Be able to complete exit slips (five-minute written responses to a question the teacher poses at the end of class to assess student understanding of key concepts, collected as students leave the classroom).	From a fact pattern, create a list of questions to ask the hypothetical client to determine if the client has a cause of action (or perhaps to gather information to prepare a will or determine the correct business structure).	Draft a document that requires use of the underlying substantive knowledge.

47. See Paul D. Callister, *Time to Blossom: An Inquiry into Bloom's Taxonomy as a Hierarchy and Means for Teaching Legal Research Skills*, 102 LAW LIBR. J. 191, 199 (2010) (describing how Bloom's taxonomy arranges the types of learning "in a hierarchy of progressive difficulty and importance"); Penny L. Willrich, *The Path to Resilience: Integrating Critical Thinking Skills into the Family Law Curriculum*, 3 PHX. L. REV. 435, 442-49 (2010) ("Ascension from the lowest level of knowledge requires increasingly difficult or complex cognitive processing to reach the highest level of evaluation.").

48. See Sophie Sparrow, *Taking a Small Step Toward More Assessments*, LAW TCHR., Fall 2009, at 1, 1; see also Hess, *supra* note 21 (discussing additional assessment ideas); Cassandra L. Hill, *Peer Editing: A Comprehensive Pedagogical Approach to Maximize Assessment Opportunities, Integrate Collaborative Learning, and Achieve Desired Outcomes*, 11 NEV. L.J. 667, 668-69 (2011) (advocating for collaborative peer editing exercises as an assessment strategy). ABA Interpretation 314-2 provides that "[a] law school need not apply multiple assessment methods in any particular course. Assessment methods are likely to be different from school to school. Law schools are not required by Standard 314 to use any particular assessment methods." ABA STANDARDS, *supra* note 1, § 314-2.

Figure 5 continued

Developing a Knowledge Base	Demonstrating Practical Applications	Transferring Learning to New Situations
Be able to explain a term in a manner a client would understand.	Give small groups (not more than three to four students) an issue and have them come to a consensus about how that issue should be resolved. (This project is really two assessments: Can a student persuasively explain their position, and can a student listen to and understand another's position?)	Prepare a memorandum to the partner with advice about a client's specific situation.
Recite a rule of law and give an example of when it would be applicable.	Explain how two courts, using a similar fact pattern, came to different conclusions (explain how courts can engage in differing analyses to reach different conclusions from similar facts).	Draft a letter to a client with advice about the client's specific situation.
Take a quiz at the beginning of class, marking down responses. Take the same quiz at the end of class, noting whether understanding of the material has changed.	Explain how two opinions using the same analysis come to different conclusions (explain how the same analysis, but with a small change in facts, can result in a different conclusion).	Create a flowchart covering specific content.
Complete a worksheet that requires students to identify the rules or define terms that apply in a class period.	Draft a paragraph (section) to be used in a document, based on knowledge of the underlying substantive area.	Create a checklist of facts to be obtained from a client with respect to a certain subject matter area.
Write the rules to be applied during that class period on the board.	Prepare an exit slip with an explanation of how the student anticipates seeing one of the topics covered in class in a law practice.	Negotiate resolution of a client's issue with an opposing party.
Create a mnemonic to memorize a rule.	Focusing on a particular area or concept, have the student identify what he knew prior to class, what he learned during class, and what he still wants to know.	Brainstorm solutions to a client's particularly difficult situation.

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2. *Seeing the Taxonomy at Work in Building Skills*

I have utilized the levels of Bloom's taxonomy in several of my classes, moving students from the bottom of the skills pyramid to the top over the semester's term. Figure 6 is what this assessment looks like in my Business Organizations class, isolating the issue of agency.⁴⁹

B. *Application Focus*

The focus in law school on content knowledge has often missed the mark in that it fails to recognize that students who become practicing attorneys are expected to be able to do something with that knowledge: meet with a client and ask relevant questions, make a decision about whether to take a case, file a complaint, negotiate a settlement, decide a plan of action for the client, recommend a business entity, conduct legal research, or construct an estate plan.⁵⁰ Inherent in a student's ability to effectively

Figure 6

Knowledge	<p>Prior to class, students took an online quiz. The purpose of the quiz was to verify that they understood the most fundamental rules and definitions related to actual and apparent authority.</p> <p>Prior to class, students completed a worksheet based on the assigned reading. The worksheet required them to summarize the rules related to actual and apparent authority (they knew the worksheet would be used in class).</p>
Comprehension	<p>Following presentation of the material, students worked through actual and apparent authority problems assigned from the book. Students referred to the worksheet for the rules they were applying in answering the problems.</p>
Application	<p>Students were provided a hypothetical fact pattern involving several potential agency issues. Students worked in small groups (no more than four members), with each group assigned a different client perspective (principal or third party). Students had to decide whether actual or apparent authority could have been applied to their client's situation. After each group had flushed out the strengths and weaknesses of its case, the groups were paired up and given the opportunity to negotiate a solution to the disagreement as to whether the (purported) agent had authority to bind the principal. As part of this process, students were expected to both be able to clearly articulate their position and understand and appreciate the merits of a position presented by the opposing side.</p>
Analysis	<p>The concept of agency appeared in connection with sole proprietorships, partnerships, and corporations. Accordingly, students had the opportunity to see a principal-agent relationship existing in many different settings. In seeing the concept from so many different angles, students could better appreciate the nuances of the concept.</p>

49. Every class involved several forms of assessment. This example focuses only on those assessments related to the agency theories of actual or apparent authority.

50. See Barry, *supra* note 3, at 250; Edwards, *supra* note 3, at 34–35.

Evaluation and synthesis	Several class periods were devoted to students having an opportunity to develop an issue on their own. It began with an interview of a (mock) client. From the facts students gathered in the interview, they had to identify the issues presented. Once having recognized the issue was an agency issue (whether the client had actual or apparent authority to bind the principal), they prepared a memorandum to the partner setting forth the facts learned from the client, the rules related to agency, a discussion of how the rules applied to the facts obtained from the client, and a conclusion. ⁵¹
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carry out any of these activities is knowledge of the underlying content. For example, a student who does not have a firm grasp on the differences between a partnership, corporation, and limited liability company will not know what questions to ask a client to best advise what business entity to create. Similarly, a student who does not have an understanding of hearsay may not be able to properly assess the strength of a case prior to filing a complaint. Accordingly, one way to determine if students understand the course content or its nuances is to have them demonstrate application of that content in a practice-type setting.

To consider the approach more broadly, a law school program could intentionally incorporate such a use-based approach to doctrinal instruction across its curriculum.⁵² However, this approach requires more than just embedding problems within the curriculum. Professors who are familiar with the content area easily wrap their knowledge around an application.⁵³ In contrast, students who are just learning a subject matter area most likely do not have the same level of knowledge and application dexterity. Thus, for this type of assessment model to most benefit students, the professor must first demonstrate or model the application, helping them understand the transition from knowing to doing.

For example, the professor can walk students through a statute-reading problem, explaining the process as she goes and encouraging them to think about how they would approach the exercise on their own. Or the professor can brainstorm with students about what questions they would ask a client and why, evaluating how the information gathered would connect to the underlying law. Or she could work with students to parse through a variety of possible legal arguments to determine which approach would be in the client's best interest. It is a temporary support structure provided by the professor to assist students in expanding their understanding of how

51. It was clear to me that this project was unfamiliar territory for students. I heard comments along the lines of "This is the first time I haven't been told what to think," and "I'm so nervous. I have to figure this out."

52. Maryellen Weimer, *Targeted Skill Development: Building Blocks to Better Learning*, FAC. FOCUS (Oct. 22, 2012), <http://www.facultyfocus.com/articles/teaching-professor-blog/targeted-skill-development-building-blocks-to-better-learning/> ("We don't do all that badly sequencing content across courses, but we don't often plan skill development in the same careful way.").

53. Paula Lustbader, *Construction Sites, Building Types, and Bridging Gaps: A Cognitive Theory of the Learning Progression of Law Students*, 33 WILLAMETTE L. REV. 315, 321 (1997) ("As experts, law teachers have internalized so much of the information and process that they are not consciously aware of all that goes into their analysis.").

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the underlying material is applied. The idea is that what students can do with assistance of the professor today, they can do independently tomorrow.

C. Holistic Approach—the Five Cs

Quite simply, the objective of an assessment is to determine what students have learned and timely correct any mistakes in the learning process. To that end, it does not need to be a complicated or intrusive process. Rather, the professor could simply follow the five Cs: connect, construct, commit, confirm or correct, and create.⁵⁴

1. Connect

Students must be connected to the information. Sometimes it seems that students are not engaged with the material. They are content to passively write down what they are told while patiently waiting for the term to pass so they can move on to another area of law.

Can the professor help students be motivated to engage with the material? “Motivation falls along a continuum, with more [extrinsic] forms of motivation at one end and more [intrinsic] forms at the other.”⁵⁵ Extrinsic motivation is the motivation to achieve an external reward or avoid a punishment.⁵⁶ Intrinsic motivation comes from the inherent satisfaction of doing an activity and is more successful in promoting learning and achievement.⁵⁷ “[A]ny type of expected, tangible reward (excluding unexpected rewards and praise) tends to undermine intrinsic motivation.”⁵⁸ Accordingly, threats, deadlines, directives, and competition diminish intrinsic

54. The five Cs is an approach created by the author.

55. Douglas A. Guiffrida et al., *Do Reasons for Attending College Affect Academic Outcomes? A Test of a Motivational Model from a Self-Determination Theory Perspective*, 54 J.C. STUDENT DEV. 121, 122 (2013); see also Jeff Allen et al., *Third-Year College Retention and Transfer: Effects of Academic Performance, Motivation, and Social Connectedness*, 49 RES. HIGHER EDUC. 647, 649 (2008); Sheila Brownlow & Renee D. Reisinger, *Putting Off Until Tomorrow What is Better Done Today: Academic Procrastination as a Function of Motivation Toward College Work*, 15 J. SOC. BEHAV. & PERSONALITY (SPECIAL ISSUE) 15, 17–18 (2000) (providing an overview of extrinsic and intrinsic motivation); JOSEPH HOUDE, *ANDRAGOGY AND MOTIVATION* 91 (2006), <http://files.eric.ed.gov/fulltext/ED492652.pdf> (discussing whether learners are more responsive to external or internal motivators); Matthew L. Partin et al., *Yes I Can: The Contributions of Motivation and Attitudes on Course Performance Among Biology Nonmajors*, 40 J.C. SCI. TEACHING 86, 86 (2011) (discussing how students initiate and sustain learning behavior through extrinsic and intrinsic motivators).

56. See Brownlow & Reisinger, *supra* note 55; Partin et al., *supra* note 55.

57. See Brownlow & Reisinger, *supra* note 55; Partin et al., *supra* note 55.

58. Partin et al., *supra* note 55; see also Gregory N. Mandel, *To Promote the Creative Process: Intellectual Property Law and the Psychology of Creativity*, 86 NOTRE DAME L. REV. 1999, 2007–08 (2011) (discussing the difference in work output that is fueled by intrinsic motivation rather than extrinsic motivation); Amy Wrzesniewski & Barry Schwartz, *The Secret of Effective Motivation*, N.Y. TIMES (July 4, 2014), <https://www.nytimes.com/2014/07/06/opinion/sunday/the-secret-of-effective-motivation.html> (discussing the effect on any activity by introducing extrinsic motivators in addition to intrinsic motivators); TERESA GARCIA & PAUL R. PINTRICH, *CRITICAL THINKING AND ITS RELATIONSHIP TO MOTIVATION, LEARNING STRATEGIES, AND CLASSROOM EXPERIENCE* 3 (1992), <http://files.eric.ed.gov/fulltext/ED351643.pdf> (discussing the effects of intrinsic versus extrinsic motivators on critical thinking).

motivation.⁵⁹ Such activities focus “attention on the external reasons for doing something, thereby minimizing the importance of the original drive.”⁶⁰

Self-determination theory (SDT) is a theory of motivation and development that is based on the principal that intrinsic motivation is more conducive to learning than extrinsic.⁶¹ “According to SDT, there are three primary psychological needs that, when satisfied, foster intrinsic motivation: (a) autonomy, . . . (b) competence, . . . and (c) relatedness . . .”⁶² Satisfying the three need-drivers helps shift motivation from the extrinsic to the intrinsic end of the motivation continuum.⁶³

Competence “is the need to test and challenge one’s abilities” and to receive positive feedback.⁶⁴ Completing an assigned reading and sitting through a lecture on the reading involves little in the way of challenging the student’s ability to understand or use the material covered. Nor can these activities provide much in the way of positive feedback. Being asked to apply the information in a meaningful way can create the challenge students need to achieve a deeper understanding of and connection to the material. Autonomy “occurs when students choose to become engaged in learning because the subject and activities are closely aligned with their interests and values.”⁶⁵ Perceived autonomy includes opportunities for choice and the absence of external rewards or controls.⁶⁶ Law students are expected to take courses about subjects ranging from torts to criminal law to tax. It is unlikely that every course will align completely with a student’s interests. But a professor aware of the breadth and depth of a course is in the best position to help each student understand and see a connection between the course and the student’s anticipated area of practice or other

59. Brownlow & Reasinger, *supra* note 55; Partin et al., *supra* note 55.

60. Brownlow & Reasinger, *supra* note 55.

61. Guiffrida et al., *supra* note 55, at 121.

62. *Id.* at 121–22.

63. *Id.* at 122.

64. *Id.* at 121; Paula J. Manning, *Understanding the Impact of Inadequate Feedback: A Means to Reduce Law Student Psychological Distress, Increase Motivation, and Improve Learning Outcomes*, 43 CUMB. L. REV. 225, 239–41 (2013).

65. Guiffrida et al., *supra* note 55, at 121.

66. See Emmeline Paulette Reeves, *Teaching to the Test: The Incorporation of Elements of Bar Exam Preparation in Legal Education*, 64 J. LEGAL EDUC. 645, 653–54 (2015) (discussing the psychological attributes vital to law student success and ways in which law schools can help nurture those attributes).

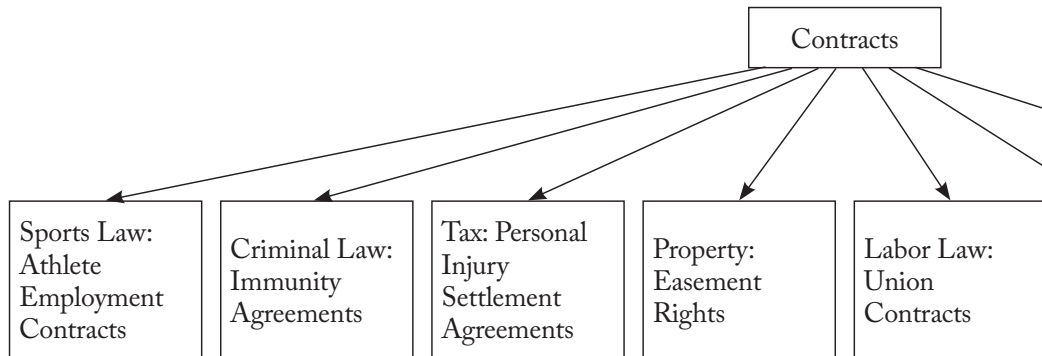
Internalisation involves people’s transformation of external regulatory processes into internal regulatory processes. Integration is the process through which these internalised regulations are assimilated with one’s self. As an external regulation becomes internalised and integrated, the person becomes more fully self-regulating of that behaviour. The person then experiences that the perceived locus of causality has shifted from external to internal.

Marcus Selart et al., *Effects of Reward on Self-Regulation, Intrinsic Motivation and Creativity*, 52 SCANDINAVIAN J. EDUC. RES. 439, 440 (2008) (citations omitted).

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goals, as is demonstrated in Figure 7:⁶⁷

Figure 7



Finally, relatedness is the “need to establish close, secure relationships” and feel satisfied with involvement with other people.⁶⁸ This need-driver can be met when a professor interacts with students in a way that engages them with the content.⁶⁹ It can also be met by the professor allowing students to interact with each other in a manner designed to enhance each student’s intrinsic motivation.⁷⁰ Necessarily, engagement requires communication *between* student and professor and *between* students, not just communication *from* professor *to* student.

2. Construct

Students must construct their own understanding of imparted information, turning the information into knowledge.⁷¹ Students construct knowledge by assigning

67. Figure 7 is intentionally formatted in this manner. It is meant to suggest that a reader imagines her own connections between the subject matter area and areas of practice. The connections, rather than being subject to specific identification, are infinite.

68. Guiffrida et al., *supra* note 55, at 121–22; see Andrew J. Martin & Martin Dowson, *Interpersonal Relationships, Motivation, Engagement, and Achievement: Yields for Theory, Current Issues, and Educational Practice*, 79 REV. EDUC. RES. 327 (2009); Jennifer Ann Morrow & Margot E. Ackerman, *Intention to Persist and Retention of First-Year Students: The Importance of Motivation and Sense of Belonging*, 46 C. STUDENT J. 483 (2012).

69. See GARCIA & PINTRICH, *supra* note 58, at 16 (“[C]ollaboration and discussion of class material with other students seems to promote critical thinking, and interestingly, course work students perceive as challenging may ‘force’ students to think more critically.”); Paul D. Umbach & Matthew R. Wawrzynski, *Faculty Do Matter: The Role of College Faculty in Student Learning and Engagement*, 46 RES. HIGHER EDUC. 153, 165 (2005).

70. See Umbach & Wawrzynski, *supra* note 69.

71. JOHN BIGGS & CATHERINE TANG, THE SOC’Y FOR RESEARCH INTO HIGHER EDUC., *TEACHING FOR QUALITY LEARNING AT UNIVERSITY* 22 (4th ed. 2011); RICHARD W. PAUL, CTR. FOR CRITICAL THINKING & MORAL CRITIQUE, *CRITICAL THINKING: WHAT EVERY PERSON NEEDS TO SURVIVE IN A RAPIDLY CHANGING WORLD* 425 (1990); see also K. PATRICIA CROSS, *TAKING TEACHING SERIOUSLY* 5 (1986), <http://files.eric.ed.gov/fulltext/ED268849.pdf> (“No wonder that employers, states, and the nation are so interested in an educational system that will result in people who have ‘idea power.’ Ideas are far more important to our world than information which has become both plentiful and cheap.”).

meaning to the knowledge, fitting it into their previous life experiences (placing it in context), using it in the classroom, and redefining how the knowledge applies in different settings, both current and foreseeable.⁷² To do this, students must be given opportunities to actively engage with the content. More specifically, they must engage in cognitive processes that require higher-order thinking that must be complex and contextualized in order to construct meaning and create knowledge from that information.⁷³

3. *Commit*

A student who does not commit to a perceived understanding of the material is less likely to acquire a deep understanding of the content. It is easy for a student to observe the professor or another student engage with the material and believe he would have used the same process or would have had the same understanding. But until he is held accountable for his thought processes and conclusions, there is no way to be certain. And there is no way for the professor to learn if the student has correctly understood the material. For the most learning to occur, the student must be called on in class. Only then does he commit to an understanding of the material and become vested in his own understanding.

[T]hose who advocate critical thinking instruction hold that knowledge is not something that can be *given* by one person to another. It cannot simply be memorized out of a book or taken whole cloth from the mind of another. Knowledge, rightly understood, is a distinctive construction by the learner, something that issues out of a *rational* use of mental processes.

PAUL, *supra*.

72. Hess, *supra* note 21, at 943; *see also* Goodson, *supra* note 42, at 167 (“Content is a building block for thinking skills.”).
73. Bezuidenhout & Alt, *supra* note 8, at 1063; *see also* BIGGS & TANG, *supra* note 71, at 23 (noting that “teachers need to see the object of instruction from the student’s perspective and lead them to higher order levels of understanding”); L. DEE FINK, CREATING SIGNIFICANT LEARNING EXPERIENCES: AN INTEGRATED APPROACH TO DESIGNING COLLEGE COURSES 67–113 (rev. & updated ed., 2013) (discussing how teachers can create courses that will provide a significant learning experience for students); JAN HERRINGTON & RON OLIVER, USING SITUATED LEARNING AND MULTIMEDIA TO PROMOTE HIGHER-ORDER THINKING 2 (1998), <http://files.eric.ed.gov/fulltext/ED428672.pdf> (“Higher-order thinking occurs when a person takes new information and information stored in memory and interrelates and/or rearranges and extends this information to achieve a purpose or find possible answers in perplexing situations.”). Receiving information is not the same as learning, which involves making meaning of information. *See* FINK, *supra*, at 117–18. Making meaning refers to developing connections between existing knowledge and new information—constructing and reconstructing knowledge to make it meaningful. *See id.* Active learning is consistent with constructivism, the learning theory in which knowledge is internalized by learners. Michael Hunter Schwartz, *Teaching Law by Design: How Learning Theory and Instructional Design Can Inform and Reform Law Teaching*, 38 SAN DIEGO L. REV. 347, 374–82 (2001) (discussing the constructivism theory). One of the attributes of constructivism is its focus on “preparing the learner to problem solve in ambiguous situations.” Ronald Noel Beyers, *A Five Dimensional Model for Educating the Net Generation*, 12 EDUC. TECH. & SOC’Y 218, 223 (2009). To the extent the information is being interpreted for the student (such as in a teacher-centered classroom where much of the information is transmitted by lecture), the professor generates little interaction and little opportunity for students to construct knowledge. *Id.* at 220. In addition, students are less likely to be engaged. *Id.*

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4. *Confirm or Correct*

Once a student has committed to an understanding of the material, the professor can either confirm for the student that his understanding is correct or, if necessary, correct the student's misunderstanding. This is an iterative process vital to the student's successful construction of knowledge, a process that necessarily requires the professor to inquire of the student about his understanding. To be most effective, confirming or correcting knowledge must occur as the student is constructing the knowledge. The more opportunities to inquire and correct, the better for the student.⁷⁴

5. *Create*

Law professors are committed to teaching the law. But anyone who has practiced law understands that the rules are just the starting point. Clients show up in the attorney's office just as often for problems that fall outside the decided rules as for matters on which the law is clear. Students must be able to bridge the gap between learning and applying the rules and carving into the space where there are no rules or the applicable rules are ill defined. Lawyers are expected to construct solutions that are grounded in the rules but transcend the settled areas of the law. This is surely where professors and students alike feel most uncomfortable. During law school, so much emphasis is placed on students getting the "right" answers that it often is difficult for students and professors to move beyond that and into the space of untested and uncertain solutions. But a true education in the law must address this aspect.

A law school program that strives to connect students to the material; works with them in constructing their knowledge; gives them reason to be invested in acquiring that knowledge; and creates numerous opportunities to develop critical-thinking skills will produce lawyers who are poised to begin creating solutions to their clients' complex legal problems.

V. CONCLUSION

By shifting to a learning outcome and assessment-based approach, content knowledge and skill development based on that knowledge become the constant and time becomes the variable. The professor can use any of a number of different assessment methods to determine the level of learning her students have mastered, not being satisfied until the learning outcome has been met.⁷⁵ Moreover, through the professor's focus on a demonstration of knowledge, students leave law school with a vast skill set designed to allow them to *do* something with the knowledge they have acquired.

74. This feedback is the intent of a formative assessment. See Stefani A. Bjorklund et al., *Effects of Faculty Interaction and Feedback on Gains in Students Skills*, 93 J. ENGINEERING EDUC. 153 (2004).

75. Spady, *supra* note 6, at 5.



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When Your Plate is Already Full: Efficient and Meaningful Outcomes Assessment for Busy Law Schools

by Melissa N. Henke*

I. INTRODUCTION

The American Bar Association (ABA) accreditation standards involving outcome-based assessment are a game changer for legal education.¹ The standards reaffirm the importance of providing students with formative feedback throughout their course of study to assess and improve student learning. The standards also require law schools to evaluate their effectiveness, and to do so from the perspective of student performance within the institution's program of study. The relevant question is no longer what are law schools teaching their students, but instead, what are students learning from law schools in terms of the knowledge, skills, and values that are essential for those entering the legal profession. In other words, law schools must shift their assessment focus from one centered around inputs to one based on student outputs.

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1. *From the Editors*, J. LEGAL EDUC., Volume 67, No. 2, at 373 (Winter 2018) ("These new requirements are sparking some of the most significant, systemic changes to law school pedagogy that we have seen in many years.").

Compliance with the ABA's assessment mandate comes at a time when law school resources are spread thinner than ever. Indeed, faculty already work with plates that are full with students, scholarship, and service. Thus, while not all in the legal academy are on board with the ABA's approach to outcomes assessment or to outcomes assessment generally, as busy educators, we should all at least agree that the requisite response should be efficient, given that resources are limited, and meaningful, such that the work done can benefit our learners.² To do so, law schools should begin at their own tables set with full plates, so to speak, taking stock of what institutions and their faculty are already doing in terms of assessment. And it is important to think broadly here, as faculty may be surprised to learn how many of their colleagues are already doing relevant work.

While law schools may already be inclined to begin from within, this Article outlines concrete strategies they can use when working with existing faculty expertise and resources to respond to the ABA's assessment mandate in a meaningful way for students, and with the goal of maximizing efficiency and gaining broad buy in. While prior scholarship has outlined best practices for outcomes assessment and even shared examples of how to engage in the process in the law school setting, this Article is unique in its depth and breadth of coverage by setting out a detailed case study³ that illustrates the process of developing an authentic assessment tool and beginning the process for adapting that tool to respond to both the individual student assessment and law school assessment required by the ABA.

To be clear, this Article does not suggest that only those with existing expertise or resources should be the ones to actually engage in the outcomes assessment work now required by the ABA. The goal should not be to add to the plates of a few. Instead, to create a productive and meaningful culture of assessment, experts in the field proclaim that administrators and faculty must all be involved.⁴ The ABA agrees.⁵ In

2. Marie Summerlin Hamm, et al., *The Rubric Meets the Road in Law Schools: Program Assessment of Student Learning Outcomes as a Fundamental Way for Law Schools to Improve and Fulfill Their Respective Missions*, 95 UNIV. DETROIT MERCY L. REV. 343, 368–69 (2018) (explaining that the ABA's assessment mandate is an opportunity for real change but involves a lot of work).

3. The case study involves the legal research and writing faculty at the University of Kentucky J. David Rosenberg College of Law (UK Law) in their efforts to evaluate the effectiveness of changes made to the school's required first-year Legal Research and Writing Course (LRW Course) beginning in 2011.

4. Larry Cunningham, *Building a Culture of Assessment in Law Schools*, 69 CASE W. RES. L. REV. 395, 403–04, 412, 422 (2018) (positing that implementing a collaborative and faculty-driven process, not just relying on a small group of faculty or an individual,

addition to encouraging broad buy in, a more collaborative approach helps ensure that assessment work is equitably spread among faculty.

Part II reviews the ABA standards relevant to outcomes assessment, discussing the two types of outcomes assessment required by those standards—individual student assessment and law school assessment—and sharing the underlying theory behind both. Part III outlines the stages of outcomes assessment, with a specific focus on the measurement stage of the process, because it is arguably the most time-intensive stage of the process and the one in which existing resources can prove most valuable. Part IV focuses on one common direct assessment measure, the analytic rubric, detailing how UK Law’s legal writing faculty collaboratively designed a rubric for the LRW Course appellate brief assignment, and responding to concerns that have been raised about using rubrics for assessment. Finally, Part V provides specific suggestions on how to adapt and use existing assessment measures most efficiently when responding to the ABA’s assessment mandate at both the individual student and law school levels. In other words, assessment measures, like the rubric project described in Part IV, can be adapted and used more broadly than the purpose for which they were originally designed. While the LRW Course appellate brief assignment rubric serves as the primary example to illustrate these ideas, this Article will touch on other examples and share ideas about how a variety of existing resources can transfer to the current assessment landscape mandated by the ABA.

The message here is that law schools need not panic, as they are likely to find they have more relevant assessment knowledge and

can build a culture of assessment and thus foster wider improvement); *see also* LORI E. SHAW & VICTORIA L. VANZANDT, *STUDENT LEARNING OUTCOMES AND LAW SCHOOL ASSESSMENT: A PRACTICAL GUIDE TO MEASURING INSTITUTIONAL EFFECTIVENESS* 48–49 (Carolina Academic Press 2015) (discussing the need for faculty involvement and cooperation). Professor Cunningham cautioned, however, that in his experience law school representative attendance at assessment conferences held around the time the new ABA standards were launched was “overwhelming[ly] female and drawn from legal writing and clinical contract ranks.” 69 *CASE W. RES. L. REV.* at 405 n.67. Thus, a more “full faculty” approach to assessment should also help avoid these gender and status disparities.

5. AM. BAR ASS’N, *Managing Director’s Guidance Memo, Standards 301, 302, 314 and 315*, at 3 [hereinafter ABA June 2015 Guidance Memo] (June 2015), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/governancedocuments/2015_learning_outcomes_guidance.authcheckdam.pdf (“Different types of faculty— doctrinal, clinical, legal writing and others—play important roles in identifying and assessing learning.”); *see also* Victoria L. VanZandt, *The Assessment Mandates in the ABA Accreditation Standards and Their Impact on Individual Academic Freedom Rights*, 95 *U. DETROIT MERCY L. REV.* 253, 269–70 (2018) (noting that ABA Standard 404(a)(2) explicitly mentions “assessing student learning at the law school” when discussing full-time faculty member responsibilities).

materials to work from than first thought. If professors are willing to share their relevant experience and resources, work collaboratively to expand and adapt from that base as needed, and spread the related assessment responsibilities widely and fairly among the faculty, then the ABA's call for outcomes assessment can be answered with meaning and without forcing any one faculty member's plate to overflow.

II. THE ABA STANDARDS ON LEARNING OUTCOMES, FORMATIVE ASSESSMENT, AND INSTITUTIONAL ASSESSMENT

This Part offers general background on the ABA standards relating to learning outcomes and assessment. Section B then follows with a more in-depth look at the theory behind the types of assessment law schools must engage in under the described standards.

A. *The Relevant ABA Standards*

In 2008, the Council of the Section of Legal Education and Admissions to the Bar charged the Standards Review Committee to lead a comprehensive review of the accreditation standards governing legal education. Two important components of the review are the Special Committee on Output Measures and the Student Learning Outcomes Subcommittee (Output Measures Committee). The Output Measures Committee was charged with determining “whether and how output measures, other than bar passage and job placement, might be used in the accreditation process.”⁶ The focus historically had been on a law school's inputs, in terms of resources invested into the educational process, and on indirect output data regarding bar passage and job placement rates.⁷ The Output Measures Committee issued a seventy-one-page report analyzing how other accreditation bodies use outcomes measures (all ten of the other professional accrediting bodies reviewed used outcome measures in their standards) and noting that regional accreditation agencies have also been focused on student learning

6. ABA June 2015 Guidance Memo, *supra* note 5, at 3.

7. Jamie R. Abrams, *Experiential Learning and Assessment in the Era of Donald Trump*, 55 DUQ. L. REV. 75, 79 (2018) (citing Cara Cunningham Warren, *Achieving the ABA's Pedagogy Mandate*, 14 CONN. PUB. INT. L.J. 67 (2014)). Common inputs include faculty qualifications, nature of facilities, classes offered, readings and assignments given (versus student work product resulting from those assignments). SHAW & VANZANDT, *supra* note 4, at 10; *see also From the Editors*, 67 J. LEGAL EDUC. 373, 373 (noting input-based model “focus[es] on budget, facilities, academic metrics of incoming students and number of faculty”).

outcomes.⁸ The report concluded that current ABA accreditation standards should be reviewed and revised “to reduce their reliance on input measures and instead adopt a greater and more overt reliance on outcome measures.”⁹ The Standards Review Committee responded by studying the matter and making recommendations to the Council, which included input from the Student Learning Outcomes Subcommittee.

The Standards Review Committee recommendations resulted in new and revised standards adopted by the Council, which went into effect on August 12, 2014. The most relevant standards for this Article are Standards 301, 302, 314, and 315.¹⁰

As they relate to this Article, the Assessment Standards set out new requirements regarding learning outcomes and assessment. A key

8. ABA June 2015 Guidance Memo, *supra* note 5, at 3. The 2008 report relies on two well-known 2007 publications that also support the use of outcomes assessment: WILLIAM M. SULLIVAN, ET AL., *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* [hereinafter *CARNEGIE REPORT*] (John Wiley & Sons, Inc. 2007), and ROY STUCKEY, ET AL., *BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP* [hereinafter *BEST PRACTICES*] (2007). In addition, the 2008 report correctly notes that university-level accreditation bodies (regional accreditors) have been requiring outcomes assessment plans for the universities they accredit; as a result, some universities had already started requiring law schools to prepare assessment plans even before the ABA did. Cunningham, *supra* note 4, at 401; David Thomson, *When the ABA Comes Calling, Let's Speak the Same Language of Assessment*, 23 *PERSPECTIVES: TEACHING LEGAL RES. & WRITING* 68, 68 (2014); see also Anthony Niedwiecki, *Prepared for Practice? Developing a Comprehensive Assessment Plan for a Law School Professional Skills Program*, 50 *U.S.F. L. REV.* 245, 247 (2016); Ruth Jones, *Assessment and Legal Education: What is Assessment, and What the *# Does It Have to Do with the Challenges Facing Legal Education?*, 45 *MCGEORGE L. REV.* 85, 93 (2013).

9. ABA June 2015 Guidance Memo, *supra* note 5, at 3 (noting that “shifting towards outcomes measures is consistent with the latest and best thinking of both the higher education and legal education communities”).

10. Standards 301, 302, 314, and 315 are referred to collectively in this article as “the Assessment Standards.” Given the time involved in implementing the Assessment Standards, the ABA created a transition and implementation (or phase-in) plan for compliance. Under this plan, law schools were to begin applying the Assessment Standards in the 2016–17 academic year. AM. BAR ASS'N, *Transition to and Implementation of the New Standards and Rules of Procedure for Approval of Law Schools*, at 2 (Aug. 13, 2014), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/governancedocuments/2014_august_transition_and_implementation_of_new_aba_standards_and_rules.authcheckdam.pdf. In the initial stages of a law school's implementation of the Assessment Standards, the ABA will focus on “the seriousness of the school's efforts to establish and assess learning outcomes,” including the “ongoing process of gathering information” about students' progress toward achieving those outcomes, but not on achieving a certain level of achievement for any particular learning outcome. *Id.*

guiding principle in the implementation of the standards is that “[t]he focus on outcomes should shift the emphasis from what is being taught to what is being learned by the students.”¹¹ Generally speaking, the goal of “outcomes assessment is to understand how educational programs are working and to determine whether they are contributing to student growth and development.”¹² An example I used with my faculty colleagues considers when a parent tells her child to feed the dog each morning before leaving for school. Inputs assessment measures effectiveness simply by looking to what the parent said to the child about feeding the dog (morning reminders, a written note on the refrigerator). However, outcomes assessment shifts the focus to the results of those reminders by looking to whether there is actually food in the dog’s bowl each morning. It is not enough to just claim success by “teaching” the child to feed the dog if the results show that the child has not actually learned to complete the task and the dog is left hungry.

While outcomes assessment is new for law schools, it is unlikely to be a fleeting trend in legal education.¹³ Many view the change as a positive and long overdue one for legal education, and one that law schools can truly benefit from.¹⁴ According to proponents, outcomes assessment promotes active student learning, which can better prepare students to enter the legal profession, and to do so as more self-directed learners.¹⁵ They say it also promotes reflective teaching, which can result in important curricular changes where needed.¹⁶ But not everyone in the academy has been so quick to embrace the Assessment Standards and

11. ABA June 2015 Guidance Memo, *supra* note 5, at 3; *see also* SHAW & VANZANDT, *supra* note 4, at 11.

12. TRUDY W. BANTA & CATHERINE A. PALOMBA, ASSESSMENT ESSENTIALS: PLANNING, IMPLEMENTING, AND IMPROVING ASSESSMENT IN HIGHER EDUCATION 9–10 (2d ed. 2015).

13. *E.g.*, SHAW & VANZANDT, *supra* note 4, at 25, 29 (noting that “[o]utcomes assessment has been entrenched in K–12 and undergraduate education for the last decade and is not waning” and that “law schools are among the last of the professional schools to face mandated outcomes assessment”).

14. *E.g.*, Abrams, *supra* note 7, at 80 n.22 (citing several helpful articles for general background on this topic).

15. GREGORY S. MUNRO, INSTITUTE FOR LAW SCHOOL TEACHING, OUTCOMES ASSESSMENT FOR LAW SCHOOLS 16–17 (2000) (explaining that assessment is not just about measuring student or institutional effectiveness after the fact, but is instead “an instrument of learning” because the purpose is to actually improve student learning while the course of study is ongoing).

16. SHAW & VANZANDT, *supra* note 4, at 32 (noting that outcomes assessment serves an institution “by providing concrete evidence to guide [its] budgeting, curriculum design, teaching, and strategic planning”); Warren, *supra* note 7, at 74–76 (positing that the mandate for outcomes assessment supports academic success, promotes graduate success, and encourages improved pedagogy).

related changes, especially given the time and resources involved.¹⁷ Regardless of one's view on their merit, the Assessment Standards have been described as "the most significant change in law school accreditation standards in decades."¹⁸ As one scholar put it, "[t]he new ABA accreditation standards reflect a 'fundamental shift' in the delivery of legal education and curricular design . . ."¹⁹ Others have used words like "revolutionary" and "sea change."²⁰

There are two key components to the ABA's assessment mandate. First, law schools must engage in formative assessment in addition to summative assessment, at least in some courses, to inform individual student learning. Second, each accredited law school must engage in a formal and ongoing evaluation of its effectiveness as an institution, and must do so from the perspective of its students' performance within the law school's program of study. In doing so, each law school will have to answer two crucial questions: What does the law school want its "students to know and be able to do when they graduate," and how will the law school *know* that its students have achieved such competencies?²¹

The next few subsections review the language of the Assessment Standards themselves.

17. *E.g.*, Steven C. Bahls, *Adoption of Student Learning Outcomes: Lessons for Systemic Change in Legal Education*, 67 J. LEGAL EDUC. 376, 377 (2018) (stating the change to "outcome assessment has been highly controversial" where opponents believe the change will "divert resources from traditional doctrinal faculty, thereby diminishing their role"); Abrams, *supra* note 7, at 84–85 (noting concerns regarding need for training and support, all while law schools are forced to do more with fewer resources) (citing Warren, *supra* note 7, at 79); Niedwiecki, *supra* note 8, at 246 (noting legal educators' anxiety over time and resources involved in complying with the Assessment Standards); *see also* Molly Worthen, *The Misguided Drive to Measure 'Learning Outcomes'*, THE NEW YORK TIMES (Feb. 23, 2018), <https://www.nytimes.com/2018/02/23/opinion/sunday/colleges-measure-learning-outcomes.html> (arguing that the drive to measure learning outcomes in higher education has become misguided and "devour[s] a lot of money for meager results").

18. Bahls, *supra* note 17, at 376.

19. Abrams, *supra* note 7, at 79 (quoting Niedwiecki, *supra* note 8, at 247).

20. Bahls, *supra* note 17, at 376 (attributing these quotes to the former President of the American Law Schools ("revolutionary") and chair of the relevant ABA subcommittee ("sea change").

21. Niedwiecki, *supra* note 8, at 246 (emphasis added); *see also* SHAW & VANZANDT, *supra* note 4, at 29 ("Articulating outcomes is not sufficient to satisfy the accreditation standards—your school needs to measure student performance to determine if the outcomes are being achieved.")

1. Standards 301 & 302. Objectives of Programs of Legal Education & Learning Outcomes

First, new Standard 301(b) and revised Standard 302 call for law schools “to develop and publish learning outcomes that explicitly state what they want their students to be able to do and know upon completion of the law school curriculum.”²² In other words, law schools must establish outcomes that cover competencies related to the practice of law.²³ Under the revised Standard 301, law schools must “establish and publish learning outcomes” designed to achieve objectives that include preparing their graduates “for effective, ethical, and responsible participation as members of the legal profession.”²⁴ Standard 302 provides the following specific guidance about those institutional learning outcomes:

A law school shall establish learning outcomes that shall, at a minimum, include competency in the following: (a) Knowledge and understanding of substantive and procedural law; (b) Legal analysis and reasoning, legal research, problem-solving, and written and oral communication in the legal context; (c) Exercise of proper professional and ethical responsibilities to clients in the legal system; and (d) Other professional skills needed for competent and ethical participation as a member of the legal profession.²⁵

It is important to clarify what is meant by learning outcomes. They are not aspirational goals. Instead, they are “clear and concise statements of knowledge that students are expected to acquire, skills students are expected to develop, and values that they are expected to understand and integrate into their professional lives.”²⁶ For purposes

22. Niedwiecki, *supra* note 8, at 246–47.

23. ABA June 2015 Guidance Memo, *supra* note 5, at 4.

24. AM. BAR ASS'N, STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS, at 15 (2017–18) [hereinafter ABA STANDARDS], https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2017-2018ABASStandardsforApprovalofLawSchools/2017_2018_standards_chapter3.authcheckdam.pdf.

25. ABA STANDARDS, *supra* note 24, at 15. Law schools can also add outcomes that reflect their unique mission. *Id.* Note that competency is not defined in the standards, and its meaning is likely to be an ongoing discussion among legal educators. See Judith Welch Wegner, *Contemplating Competence: Three Meditations*, 50 VAL. U. L. REV. 675, 676 (2016) (offering reflections on understanding competence and its significance, namely as its relates to implementation of the Assessment Standards).

26. ABA June 2015 Guidance Memo, *supra* note 5, at 4. The CARNEGIE REPORT and BEST PRACTICES also organize around the idea of knowledge, skills and values, emphasizing that skills and professional identity are as important as knowledge (and law

of law school assessment, the outcomes selected should be essential to a graduate.²⁷ And because law schools will be required to measure whether students are achieving the outcomes (discussed in more detail below), they should be written to “require a student to ‘do’ something that you can observe and measure.”²⁸ In other words, the outcomes should be written as actions students should be able to perform to demonstrate what they have learned.

2. Standard 314. Assessment of Student Learning

Second, the new Standard 314 requires law schools to “utilize both formative and summative assessment methods in its curriculum to measure and improve student learning and provide meaningful feedback to students.”²⁹ In other words, law schools must engage in individual student assessment, or “*meaningful assessment* of their progress in helping students achieve outcome goals.”³⁰ Thus, while both formative and summative assessment methods are not required in every course, the addition of Standard 314 makes clear that formative assessment must “be integrated into the law school’s program to . . . ‘provide meaningful feedback to improve student learning’ in the law school’s overall program.”³¹

schools should thus strive for more of a balance with all such competencies). CARNEGIE REPORT, *supra* note 8, at 12; BEST PRACTICES, *supra* note 8, at 94

27. SHAW & VANZANDT, *supra* note 4, at 58.

28. *Id.* at 66. For example, the UK Law’s learning outcome regarding communication calls for students to be able demonstrate that they can do the following:

[C]ommunicate clearly and effectively in oral and written form by: a. [p]resenting material in a clear, concise, well-organized and professional manner that is appropriate to the audience and the circumstances; and b. [s]electing and using the appropriate legal terminology to accomplish a desired legal effect (e.g., in contracts, wills, motions, jury instructions, discovery documents).

Learning Outcomes—ABA Standard 302, UNIVERSITY OF KENTUCKY COLLEGE OF LAW, <http://law.uky.edu/academics/learning-outcomes-aba-standard-302> (last visited May 24, 2018).

29. ABA STANDARDS, *supra* note 24, at 23.

30. ABA June 2015 Guidance Memo, *supra* note 5, at 5 (emphasis added).

31. *Id.* (quoting ABA STANDARDS, *supra* note 24, at 23). As noted above, the Outcome Measures Committee’s 2008 report relied on the CARNEGIE REPORT and BEST PRACTICES. Both publications criticized legal education for its overreliance on summative assessment, which does not support students in becoming metacognitive about learning, and proffered that the primary form of assessment in legal education should be formative assessment. CARNEGIE REPORT, *supra* note 8, at 173; BEST PRACTICES, *supra* note 8, at 255–56; *see also* SHAW & VANZANDT, *supra* note 4, at 27 (noting, “Legal education has been criticized over the years for its failure to provide sufficient feedback to students.”).

Section B of this Part provides more detail about individual student assessment in law school courses, including a discussion of formative and summative assessment methods, but for now, it is important to understand that both forms of assessment are contemplated in the Assessment Standards.

3. Standard 315. Evaluation of Program of Legal Education, Learning Outcomes, and Assessment Methods

Third, the new Standard 315 responds to the Output Measures Committee's recommendation that the emphasis on outcomes, or student outputs, "reflects a shift in focus from what is being taught in law schools to what is being learned by students" when it comes to measuring the effectiveness of that school's program of legal education.³² Specifically, Standard 315 requires the following:

The dean and the faculty of a law school shall conduct ongoing evaluation of the law school's program of legal education, learning outcomes, and assessment methods; and shall use the results of this evaluation to determine the degree of student attainment of competency in the learning outcomes and to make appropriate changes to improve the curriculum.³³

Put another way, law school "assessment requires collective faculty engagement and critical thinking about our students' overall acquisition of the skills, knowledge, and qualities that ensure they graduate with the competencies necessary to begin life as professionals."³⁴ The ABA has neither defined nor set a threshold for "competency,"³⁵ which has apparently been left to individual law schools to consider.³⁶

32. ABA June 2015 Guidance Memo, *supra* note 5, at 5; *see also* Andrea A. Curcio, *A Simple Low-Cost Institutional Learning-Outcomes Assessment*, 67 J. LEGAL EDUC. 489, 491 (2018) ("Rather than look at achievement just in our own courses, institutional outcome-measures assessment requires collective faculty engagement and critical thinking about our students' overall acquisition of the skills, knowledge, and qualities that ensure they graduate with the competencies necessary to begin life as professionals.").

33. ABA STANDARDS, *supra* note 24, at 23.

34. Curcio, *supra* note 32, at 491. This Article refers to a law school's response to Standard 315 as law school assessment (to contrast it with the individual student learning assessment that is mandated by Standard 314), but note that some literature refers to Standard 315 as institutional assessment or institutional outcomes assessment, *e.g.*, Curcio, *supra* note 32, at 489, while others use programmatic assessment, *e.g.*, Cunningham, *supra* note 4, at 396 and Hamm, *supra* note 2, at 344.

35. ABA June 2015 Guidance Memo, *supra* note 5, at 5 ("It is not the goal of assessing the level of attainment, and probably not realistic to expect, that each student

In conclusion, “assessment involves ‘the systematic collection, review, and use of information about educational programs undertaken for the purpose of improving student learning and development.’”³⁷ The Assessment Standards call on law schools to do this in two main ways—at the individual student level (or course level) and at the law school level. Section B offers more detail on both.

B. Outcomes Assessment for Student Learners and Law Schools

As explained above, there are two types of outcomes assessment at issue in the Assessment Standards—individual student assessment and law school assessment.³⁸ This Section offers more detail about each in turn.

1. Individual Student Assessment

Law professors are familiar with the first type of assessment, individual student assessment. In other words, as educators, we consistently engage in classroom assessment, or assessment of student learning at the course level. We provide our students with critiques or grades that indicate a measure of their individual performance in a particular course.³⁹ Individual student assessment takes two forms, formative assessment methods and summative assessment methods, both of which are now expressly required by Standard 314.⁴⁰ This Article takes each in turn.

First, the ABA defines formative assessment methods as “measurements at different points during a particular course or at different points over the span of a student’s education that provide meaningful feedback to improve student learning.”⁴¹ In other words,

will achieve the same level of mastery for every outcome. Some students will master some outcomes in a more proficient manner than others.”)

36. See SHAW & VANZANDT, *supra* note 4, at 126 (explaining that “a threshold of 100% may not always be realistic” and noting that “experts argue for an 80% standard for thresholds”); see also *supra* note 25.

37. Warren, *supra* note 7, at 71 (quoting Jones, *supra* note 8, at 87).

38. SHAW & VANZANDT, *supra* note 4, at 27. A third type of outcomes assessment is often referred to as program assessment, which focuses on assessing the effectiveness of a series of program-specific courses (such as intellectual property, alternative dispute resolution, international studies, law & economics, etc.). See MUNRO, *supra* note 15, at 100; see also Niedwiecki, *supra* note 8, at 247, 274–79 (discussing an assessment plan for a professional skills program at The John Marshall Law School). When referring to law school assessment, this Article means assessment of the law school’s entire program of study (not some sub-set or specialty set of courses) as envisioned by Standard 315.

39. SHAW & VANZANDT, *supra* note 4, at 6.

40. ABA STANDARDS, *supra* note 24, at 23.

41. ABA STANDARDS, *supra* note 24, at 23.

formative assessment methods are designed to provide students with feedback during the learning process,⁴² meaning during a particular law school course or over the span of the student's three years in law school, as a way to promote active learning.⁴³ Moreover, because the feedback often leaves professors with a sense of what their students do and do not know while the course is still in progress, they can respond by using additional or different teaching techniques where needed to increase learning.⁴⁴ Thus, formative assessment methods not only foster active learning, but also more active (or reflective) teaching.

The most meaningful “[f]ormative assessment helps a student see where in the learning process he made a wrong (or a correct) turn [on a particular assignment] and make any needed changes on his next assignment.”⁴⁵ In other words, the feedback should respond to the student work product being evaluated and the process employed to create it. This way students are armed with information on how to emulate (or not emulate, depending on the comment) that process in later assignments. For example, when reviewing the Discussion section of a formal office memorandum, one approach would be to indicate that the stated rule for the memo's legal issue is “a good one” and yet the rule explanation is “lacking.” However, the more meaningful approach would be to explain the stated rule is proficient because it is accurate, concrete, and adequately supported by mandatory authority (using synthesis if needed), while the rule explanation is still developing because the discussion of the prior case(s) to apply the rule could be more complete in terms of the court's reasoning or holding. The same

42. SHAW & VANZANDT, *supra* note 3, at 6–7; MUNRO, *supra* note 15, at 73.

43. See Anthony Niedwiecki, *Teaching for Lifelong Learning: Improving the Metacognitive Skills of Law Students through More Effective Formative Assessment Techniques*, 40 CAP. U. L. REV. 149, 177 (2012) (“Formative assessment identifies a gap in learning, provides feedback to the student about the gap and closing the gap, involves the student in the process, and advances the students’ learning.”); see also MUNRO, *supra* note 15, at 73 (describing student involvement in the “assessment, discussion, and critique that follow their performance” after which the student should perform again “to integrate what they have just learned”).

44. See Olympia Duhart, *“It’s Not For a Grade”: The Rewards and Risks of Low-Risk Assessment in the High-Stakes Law School Classroom*, 7 ELON L. REV. 491, 498 (2015) (“In addition to helping students understand their learning strengths and deficiencies, formative assessment can also help professors learn what is working and not working about their teaching.”); CARNEGIE REPORT, *supra* note 8, at 171 (“[S]tudies of how expertise develops across a variety of domains are unanimous in emphasizing the importance of feedback as the key means by which teachers and learners can improve performance.”).

45. SHAW & VANZANDT, *supra* note 4, at 7. Given the goal, formative assessment methods may or may not factor into the student's final grade. See LINDA SUSKIE, *ASSESSING STUDENT LEARNING: A COMMON SENSE GUIDE* 11 (2d ed. 2010).

holds true, for example, in a Torts or Products Liability mid-term essay exam in which students are called on to apply the rule for negligence to a hypothetical set of facts. Instead of just noting that the student's application is "sparse" or "unsupported," the more meaningful approach would be to explain that the student should be more explicit in discussing which facts support the predicted outcome resulting from the rule's application and why (perhaps including an analogy to similar facts from a case discussed at length in class). In short, offering feedback that involves students in the process helps advance student learning.⁴⁶

Second, summative assessment methods are defined by the ABA as "measurements at the culmination of a particular course or at the culmination of any part of a student's legal education that measure the degree of student learning."⁴⁷ For this reason, summative assessment is referred to "as assessment after the fact."⁴⁸ The primary goal of summative assessment methods are to assign grades by indicating a student's level of achievement on a standardized scale or as compared to the student's peers, which is known as norm-referenced grading.⁴⁹ Given this goal, there is usually very little to no student feedback, as the student is not being given the chance to improve learning in a

46. Niedwiecki, *supra* note 43, at 177. Some would say this is not a realistic expectation for professors teaching in large casebook classes such as Torts. First, not every casebook class is sixty to one hundred-plus students. And second, there are ways to engage students in the learning process on a particular assignment even without engaging in the particularly time-intensive task of giving feedback to each individual student. See Heather M. Field, *A Tax Professor's Guide to Formative Assessment*, 22 FLA. TAX REV. 363, 394–95, 397–414, 430–31 (2019) (describing a variety of formative assessment options in this vein, including multiple choice questions or in-class exercises where explanations are then provided to the group for why an answer was right or wrong). By way of further example, a professor could provide feedback to the entire class through a model answer for a practice exam question or actual exam question (explaining the strengths and weaknesses of the answer), or a feedback memo that offers global strengths and weaknesses identified from a review of student exam answers. See Andrea A. Curcio, *Moving in the Direction of Best Practices and The Carnegie Report: Reflections on Using Multiple Assessments in a Large-Section Doctrinal Course*, 19 WIDENER L.J. 159, 167 (2009) (discussing an annotated model answer). And other viable options include TA grading, self assessment, or peer grading using model answers and rubrics. Field, *supra*, at 438–39; Curcio, *supra*, at 171–72.

47. ABA STANDARDS, *supra* note 24, at 23.

48. SHAW & VANZANDT, *supra* note 4, at 7.

49. *Id.* at 93; see also Leslie Rose, *Norm-Referenced Grading in the Age of Carnegie: Why Criteria-Referenced Grading is More Consistent with Current Trends in Legal Education and How Legal Writing Can Lead the Way*, 17 J. LEGAL WRITING INST. 123 (2011). Note, however, that not all summative assessment is norm-referenced. For example, the bar exam is a criterion-referenced exam.

future assignment.⁵⁰ Final course grades and the bar exam are common examples of summative assessment.

Much has been written about law schools' overreliance on one single, summative assessment method in most courses (namely, one end of the semester exam), which is primarily for purposes of assigning grades and ranking students. Gregory S. Munro is a legal educator who is well-known for his long-standing work on outcomes assessment. He explains that, because law schools are educating students to become practicing lawyers and professionals, "the focus of student assessment in law school should be on enhancing student performance, providing multiple evaluations of student performance, and giving appropriate feedback to students."⁵¹ The *Carnegie Report*⁵² also called for using formative assessment in training professionals, because the essential goal should "be to form practitioners who are aware of what it takes to become competent in their chosen domain" and arm "them with the reflective capacity and motivation to pursue genuine expertise."⁵³

2. Law School Assessment

In contrast to individual student assessment, law school assessment (or institutional assessment) is about the collective result. In other words, each law school must now also "use the collective performance of [its] students" to assess the law school's "*own performance as educators*."⁵⁴ In order to do so, faculty must decide "what it means to be 'effective' as a law school," as well as how and where the law school will

50. SHAW & VANZANDT, *supra* note 4, at 7; *see also* CARNEGIE REPORT, *supra* note 8, at 164–65 ("Reliance on summative evaluation provides no navigational assistance, as it were, until the voyage is over."); *id.* at 164–67 (focusing in particular on the challenges first-year law students face with this approach).

51. MUNRO, *supra* note 15, at 11; *see also* CARNEGIE REPORT, *supra* note 8, at 171 ("From our observations, we believe that assessments should be understood as a coordinated set of formative practices that, by providing important information about the students' progress in learning to both students and faculty, can strengthen law schools' capacity to develop competent and responsible lawyers.").

52. CARNEGIE REPORT, *supra* note 8.

53. CARNEGIE REPORT, *supra* note 8, at 173 (noting law students "must become 'metacognitive' about their own learning").

54. SHAW & VANZANDT, *supra* note 4, at 6 (emphasis in original); *see also id.* at 10 (explaining that law schools have historically focused on the quality of their inputs when trying to measure their effectiveness, and while that analysis is still relevant, the ABA is "now asking law schools to shift their attention to the quality of their students' *outputs*") (emphasis in original). For purposes of this article, note that institutional assessment refers only to a law school's evaluation of its educational program under Standard 315, and not any larger university-wide assessment that may be required by the larger institution with which a law school is associated (including assessments required by regional accreditors).

measure such effectiveness.⁵⁵ Professors Shaw & VanZandt posit, “The effectiveness of any institution ultimately is measured by whether it is achieving its stated mission,” and learning outcomes can help round out a way to measure that mission.⁵⁶ For example, if a law school seeks to prepare graduates to be “responsible members and leaders of the legal profession,”⁵⁷ then the school will develop a list of learning outcomes—or the essential knowledge, skills, and values—that it seeks its students to achieve by graduation in light of this stated goal or mission.⁵⁸ Faculty must then decide what level of achievement they hope their students to reach collectively, and how they will measure that achievement.⁵⁹ Unlike individual student assessment, schools can use a representative student sample when conducting law school assessment to determine if their students are accomplishing the stated outcomes, and thus avoid engaging in the more time-intensive process of assessing each student individually.⁶⁰ Moreover, while individual student assessment can involve benchmarks that are norm-referenced or criterion-referenced, benchmarks used for law school assessment are typically criterion-referenced, meaning “competency is measured based on whether a student satisfies certain [of] the prerequisites set by the assessor,” and not by comparing a student’s performance to other students as is done with norm-referenced assessment.⁶¹

55. *Id.* at 7.

56. *Id.* at 7–8 (citing ABA Standard 204, which states that law schools must submit a mission statement as part of the accreditation process).

57. *About Us*, UNIVERSITY OF KENTUCKY COLLEGE OF LAW <http://law.uky.edu/about-us> (last visited July 1, 2019).

58. SHAW & VANZANDT, *supra* note 4, at 8–9. For example, UK Law’s curriculum learning outcomes are listed on its website at <http://law.uky.edu/academics/learning-outcomes-aba-standard-302> (last visited on July 1, 2019). Learning outcomes are discussed in more detail in Part III below.

59. Susan Hanley Duncan, *They’re Back! The New Accreditation Standards Coming to a Law School Near You—A 2018 Update, Guide to Compliance, and Dean’s Role in Implementing*, 67 J. LEGAL EDUC. 462, 482 (2018). While the ABA has identified examples of assessment methods that may be used in this measurement process, schools are not required to use any particular method. ABA STANDARDS, *supra* note 24, at 24 (contemplating that “[t]he methods used to measure the degree of student achievement of learning outcomes are likely to differ from school to school”). The stages of outcomes assessment, including the measurement stage, are discussed further in Part IV below.

60. Curcio, *supra* note 32, at 502 (citing SHAW & VANZANDT, *supra* note 4, at 114–15 and ANDREA SUSNIR FUNK, *THE ART OF ASSESSMENT: MAKING OUTCOMES ASSESSMENT ACCESSIBLE, SUSTAINABLE, AND MEANINGFUL*, at 37 (Carolina Academic Press 2017) for resources with more detail on using sufficient sample sizes).

61. SHAW & VANZANDT, *supra* note 4, at 93 (emphasis omitted). Given the difference, norm-referenced assessments are not necessarily reflective of a “competent graduate.” *Id.*

Law school assessment also envisions using the aggregate data of student performance collected to make changes to the law school's program of legal education as needed. In other words, it is not enough for a law school simply to grade itself. The ABA expects schools to use the assessment data collected to make improvements to their educational program where needed.⁶²

With a better understanding of the "what" and "why" of outcomes assessment as mandated by the ABA, this Article will now turn to outline the "how" of that process.

III. THE STAGES OF OUTCOMES-BASED ASSESSMENT

There are four common stages to the outcomes assessment process, regardless of whether the assessment plan being created is for individual student assessment or law school assessment. The four stages are as follows: (1) the learning outcomes stage; (2) the measurement stage; (3) the analysis stage; and (4) the response stage.⁶³ First, in the learning outcomes stage, the assessor develops student learning outcomes that describe the fundamental knowledge, skills, and values of successful new lawyers.⁶⁴ Second, in the measurement stage, the assessor designs or implements existing measures that will determine whether students have actually achieved each of the identified learning outcomes.⁶⁵ Next, in the analysis stage, the assessor analyzes the data obtained from the measurement stage.⁶⁶ Finally, in the response stage, the data collected is used to improve student learning where needed, which is often referred to as closing the loop.⁶⁷ Put another way, the stages of outcomes assessment can be broken down into the phases of development (the learning outcomes stage), implementation (the measurement stage), and evaluation (the analysis and response stages).⁶⁸

62. SHAW & VANZANDT, *supra* note 4, at 7; *see also id.* at 32 ("A fundamental principle underlying outcomes assessment is that teachers and institutions can get better at what they do, but doing so requires self-reflections and a willingness to try something new."); CARNEGIE REPORT, *supra* note 8, at 182 (discussing the importance and benefits of institutional intentionality in the context of assessment).

63. SHAW & VANZANDT, *supra* note 4, at 11–13.

64. *Id.* at 57–58; *see also* Curcio, *supra* note 32, at 491 (describing law school learning outcomes as "the core knowledge, skills, behaviors, and attributes of successful new lawyers").

65. SHAW & VANZANDT, *supra* note 4, at 11–13.

66. *Id.*

67. *Id.*

68. *Id.* at 54; *see also* Warren, *supra* note 7, at 71; Jones, *supra* note 8, at 88.

A great deal has already been written about the outcomes assessment process generally and in the law school setting.⁶⁹ There are several helpful resources that specifically address the first stage of the process, drafting learning outcomes.⁷⁰ As noted above, the ABA has identified some learning outcomes that all new lawyers should possess, and thus that all law schools should include in their list of learning outcomes for law school assessment.⁷¹ Those outcomes include: “Knowledge and understanding” of law; “Legal analysis and reasoning, legal research, and problem-solving;” communication in the context of law; professionalism; and “Other professional skills.”⁷² The Assessment Standards give law schools freedom to add to this list to include outcomes that may reflect a particular school’s mission or culture.⁷³ Moreover, a professor’s identification of student learning outcomes for a particular course (or for individual student assessment) can be more or less inclusive, depending on the course. In other words, the professor should identify the big picture goal of the course in terms of the knowledge, skills, and values the students should be able to accomplish

69. *E.g.*, SUSKIE, *supra* note 45 (addressing outcomes assessment in higher education); MUNRO, *supra* note 15 (focusing specifically on outcomes assessment for law schools); SHAW & VANZANDT, *supra* note 4.

70. Two excellent resources for developing learning outcomes and related performance criteria (the first stage of outcomes assessment) are SUSKIE, *supra*, note 45, at 115–34 (individual student assessment) and SHAW & VANZANDT, *supra* note 4, at 57–82 (law school assessment). And because the balance of this Article focuses on the measurement stage of the outcomes assessment process, a detailed discussion of the analysis and response stages (the third and fourth stages of outcomes assessment) is outside its scope. Professors Shaw & VanZant discuss these stages in great detail. *Id.* at 135–82.

71. ABA STANDARDS, *supra* note 24, at 15.

72. *Id.*

73. *Id.* at 16. Once the law school’s learning outcomes are identified, the school can create a curriculum map, or “a grid of the courses [in a law school’s] curriculum that identifies which learning outcomes and [related] performance criteria are addressed and assessed in each course.” SHAW & VANZANDT, *supra* note 4, at 79. The map can indicate where in the curriculum the outcome is introduced, where it is practiced, and at what point students are expected “to have attained the desired level of competence.” Hamm, *supra* note 2, at 372; *see also* FUNK, *supra* note 60, at 120 (explaining that curriculum maps can be used to identify the level of depth in which a course addresses a certain learning outcome, which include: being introduced to the knowledge, skill, or value; being required to demonstrate competency in it; or receiving advanced instruction or additional practice); SHAW & VANZANDT, *supra* note 4, at 210 (discussing the same three categories, but labeling them introduced, competency, and proficiency). Sample curriculum mapping documents are fairly easy to come by, and thus schools need not reinvent the wheel when creating a format. *E.g.*, *id.* at Appendix E (sample curriculum map) and Appendix F (curriculum mapping survey sample form); FUNK, *supra* n. 60 at Appendix D (includes curriculum mapping survey and sample curriculum map).

by completion of the course.⁷⁴ Thus, the course learning outcomes may touch on knowledge, skills, or values that the law school has identified for all of its graduates more broadly (such as legal analysis and reasoning or professionalism), and it may also include an outcome that is not specifically referenced at the law school level (for example, knowledge of a specific subject matter, like international law or securities law).⁷⁵

This Article focuses on the second stage, or the resource-intensive measurement stage. In particular, the Article seeks to lay out one possible way the stage can be implemented for both individual student assessment and law school assessment once the relevant learning outcomes have been identified. The measurement stage involves (A) identifying or designing the assessment measures to be used and (B) determining the sources (or outputs) that will be measured.⁷⁶ While some principles underlying this two-part process apply to both types of assessment, instances where the process differs for individual student learning or law school assessment are noted below.

A. The Measurement Stage: Assessment Measures Generally

As an initial matter, there are two main types of assessment measurement—direct and indirect measures. A direct measure requires students to demonstrate their achievement in a tangible, visible way, such as taking an exam or completing a writing assignment.⁷⁷ In other words, students must actually create work product in some form (written or oral) so the assessor can directly examine or observe the student work product to measure whether and what student learning is taking place. In contrast, an indirect measure requires the assessor to infer whether learning has occurred through the student's opinion or another observer's opinion (without directly reviewing student work product).⁷⁸ Common examples include surveys, interviews, focus groups, and reflection papers.⁷⁹ When it comes to direct measures, there is no need for guesswork or inference because there is student work product to review. For this reason, direct assessment measures are “viewed with

74. FUNK, *supra* note 60, at 43–44.

75. Refer to FUNK, *supra* note 60, at Appendix D for examples of course learning outcomes.

76. ABA 2015 Guidance Memo, *supra* note 5, at 5–6.

77. MARY J. ALLEN, ASSESSING ACADEMIC PROGRAMS IN HIGHER EDUCATION 6–7 (Anker Publg. 2004); *see also* SHAW & VANZANDT, *supra* note 4, at 105–06.

78. SHAW & VANZANDT, *supra* note 4, at 104, 106–09; *see also* ALLEN, *supra* note 77, at Chapter 6.

79. SHAW & VANZANDT, *supra* note 4, at 104.

great favor” by assessment experts.⁸⁰ That said, indirect measures are still valuable for assessment purposes because they can assess what students and employers perceive students have learned.⁸¹ Thus, both types of measures are worth using in an assessment plan, especially for purposes of law school assessment. In fact, assessment experts recommend using multiple, varied assessment measures to evaluate student learning for purposes of outcomes assessment.⁸²

Moreover, when creating an assessment measure, be it direct or indirect, the three core principles of validity, reliability, and fairness should be considered to ensure the measure is a worthwhile one.⁸³ First, validity looks to how well a method actually measures what it is supposed to be assessing.⁸⁴ For individual student assessment, validity requires the assessment method to measure whether one or more course goals has been achieved.⁸⁵ The question for law school assessment is whether the method measures if the law school is meeting the institutional outcome(s) at issue.⁸⁶ Second, reliability confirms whether the assessment method produces the same results during repeat attempts.⁸⁷ This principle involves both “representative content sampling” and “scoring consistency.”⁸⁸ In terms of sampling, for individual student assessment, the assessment method must sample enough of the course content so that the student’s performance (or

80. *Id.* at 105; *see also* Niedwicky, *supra* note 8, at 255 (noting that indirect measures alone “do not fully capture what particular skills the students have mastered or the exact knowledge they gained in law school”).

81. For example, an externship supervisor can offer perceptions on how a student extern has performed without sharing work product that may be subject to the attorney–client privilege.

82. BEST PRACTICES, *supra* note 8, at 253 (discussing best practices for assessing student learning); SHAW & VANZANDT, *supra* note 4, at 112 (discussing the use of “methodological triangulation,” which involves using three different assessment tools, using both direct and indirect measures, when conducting institutional assessment).

83. BEST PRACTICES, *supra* note 8, at 239.

84. MUNRO, *supra* note 15, at 106. For example, if the outcome being measured relates to effective written communication, a multiple-choice exam would not be a valid method for measuring the outcome because the method must measure what has actually been learned by the student with respect to the student’s written communication (not likely through the student’s selection of multiple choice answer options drafted by a professor). *Id.*

85. *Id.* at 107 (explaining that there “must be a reasonable connection between that which is being taught in the course and that which is being assessed”). There must also be clear instructions and adequate time to complete the assignment. SHAW & VANZANDT, *supra* note 4, at 110–11; BEST PRACTICES, *supra* note 8, at 241.

86. MUNRO, *supra* note 15, at 107.

87. *Id.*; SHAW & VANZANDT, *supra* note 4, at 111.

88. MUNRO, *supra* note 15, at 107–08; SHAW & VANZANDT, *supra* note 4, at 111.

output) can reflect the extent to which the student met the course goals.⁸⁹ For law school assessment, however, the question is whether the sampling of student outputs being measured is sufficiently representative of the student body.⁹⁰ In terms of consistency, the inquiry for individual student assessment is usually whether the results are consistent across assessment methods in the same course in a given year (usually all scored by the same professor), while the inquiry for law school assessment is whether there is consistency across scorers.⁹¹ Third, fairness contemplates equity in terms of the assessment method used and in the results of that method.⁹² Moreover, an assessment method that fails for validity or reliability would also fail for fairness.⁹³

B. The Measurement Stage: Assessment Sources To Be Measured

Once the assessment method has been identified, the second aspect of the measurement stage is to identify the sources to be measured for purposes of assessment. In other words, the goal is to discern what student work product or other outputs exist, or could be created, for purposes of assessing achievement of a particular learning outcome (at the course or law school level). Again, the first stage of the outcomes assessment process involves identifying what the learning outcomes are for a particular course (when it comes to individual student learning) or for the institution overall (for purposes of law school assessment). The second stage, which is at issue in this Section, gets at measuring specific sources to determine whether the identified outcomes are being achieved.

As an initial matter, the goal should be to identify and use assessment sources that already exist. In other words, try to identify student outputs that are already being created by students because

89. MUNRO, *supra* note 15, at 107.

90. *Id.*; SHAW & VANZANDT, *supra* note 4, at 111; *see also id.* at 114–15 (discussing in more detail important questions and considerations regarding reliable representative samples).

91. SHAW & VANZANDT, *supra* note 4, at 111, 188 (defining reliability and scorer reliability); MUNRO, *supra* note 15, at 108; *see also* SHAW & VANZANDT, *supra* note 4, at 145 (discussing the need for inter-rater reliability when multiple scorers are involved); Hamm, *supra* note 2, at 383 (discussing training for evaluators).

92. MUNRO, *supra* note 15, at 109. For example, “[e]xercises which assume familiarity with dominant culture may present problems of fairness for those of minority cultures.” *Id.*

93. *Id.* at 110.

they are assigned as part of a course.⁹⁴ Referred to as embedded assessments (versus add-on assessments), existing assessment sources support validity because they are likely to be closely aligned with faculty expectations in terms of student learning in a given course (namely, there is likely to be a tie between what is being taught in the course and what is being assessed in the source), and students are motivated to perform well because they are part of the assigned work (and could also be tied to the course grade).⁹⁵ Embedded assessments are also more efficient than add-on assessments because they call upon existing resources rather than require time be spent to create or complete new tests or assignments that would yield student outputs.⁹⁶

How to locate existing assessment sources turns on the type of assessment at issue. For individual student assessment, the professor for the course in question is intimately familiar with the tests or assignments created for the course, and thus also what student work product or other outputs are generated in response. When it comes to law school assessment, the curriculum map created for the first stage of outcomes assessment can be very useful in discerning which courses have outputs that could be collected for the learning outcome at issue.⁹⁷

The depth and breadth of outputs needed also depends on the type of assessment at issue. When it comes to individual student assessment, the professor usually reviews the outputs from all students in the course, as the goal is to discern what student learning has been

94. Lori A. Roberts, *Assessing Ourselves: Confirming Assumptions and Improving Student Learning by Efficiently and Fearlessly Assessing Student Learning Outcomes*, 3 DREXEL L. REV. 457, 470 (2011) (citing Allen, *supra* note 77, at 13–14).

95. SHAW & VANZANDT, *supra* note 4, at 100; *see also* Victoria L. VanZandt, *Creating Assessment Plans for Introductory Legal Research and Writing Courses*, 16 LEGAL WRITING 313, 341 (2010) (explaining that embedded assessment means that “faculty [can] examine learning where it occurs, students are motivated to demonstrate their learning, and assessment planning contributes to an aligned curriculum”). While the assessment source can also be tied to a course grade, the grade itself is not a viable assessment source. That is because a grade usually says something about the students’ performance vis-à-vis the class (through the grade distribution), “[b]ut it does not usually convey direct information about which of the course’s goals and objectives for learning have been met or how well they have been met by the student.” BANTA & PALOMBA, *supra* note 12, at 53; *see also* SHAW & VANZANDT, *supra* note 4, at 13 (“When you think about a grade, it is essentially an artificial construct designed to compare the performance of one student to another and rank them accordingly.”). Instead, it is the underlying tests or assignments on which grades are based that can be a source for meaningful assessment. *Id.*

96. ANDREA LESKES & BARBARA D. WRIGHT, *THE ART & SCIENCE OF ASSESSING GENERAL EDUCATION OUTCOMES: A PRACTICAL GUIDE* 36 (2005) (explaining that “[e]mbedd[ed] assessment is an efficient way to collect high-quality, direct evidence of learning with minimal disruption and maximum utility”).

97. SHAW & VANZANDT, *supra* note 4, at 77–78, 103; *see also supra* note 73.

accomplished by each student in the course in a given semester (and the professor may also be grading the assignment). However, when conducting law school assessment, the “data is typically culled across courses, professors, and dates using a variety of tools.”⁹⁸ Using multiple assessment sources and methods for each learning outcome can increase the validity and reliability of the results for law school assessment.⁹⁹ Referred to as triangulation, using three different assessment measures, including both direct and indirect measures, allows for a more comprehensive view of assessment sources and, thus, student performance and attitudes.¹⁰⁰ Doing so also makes assessment more “accessible to different learning styles and strengths” and “bring[s] in a wider range of evaluators.”¹⁰¹

Finally, while there are general principles and best practices to consider in designing assessment methods, which have been discussed in this Part, the ABA acknowledges that there is no uniform method to conduct assessment, and no specific measures are required by the Assessment Standards. Rather, this aspect of outcomes assessment should be school-specific.¹⁰² Part IV will explore rubrics in more detail as one possible direct assessment measure law schools can consider using, especially given that many faculty already design or use this tool in their classrooms.

IV. RUBRICS AS AN ASSESSMENT METHOD

Rubrics are the most common direct assessment method that can be used for both individual student assessment and institutional assessment.¹⁰³ Rubrics are also tools that many professors are already familiar with creating and using in all types of law school courses, which is particularly important when it comes to the goal of working from existing resources when trying to comply with the Assessment

98. SHAW & VANZANDT, *supra* note 4, at 13, 111 (emphasizing that the sampling of outputs used must “represent the characteristics of the student body as a whole” in order to be reliable).

99. *Id.* at 112 (“Even if it is extremely well designed and well executed, no single tool/assessment activity can provide the comprehensive view needed to determine whether a criterion is being achieved.”); *see also* Jones, *supra* note 8, at 101.

100. SHAW & VANZANDT, *supra* note 4, at 112; *see also id.* at 13 (explaining that using multiple assessment measures yields a “more nuanced view of student achievement of the learning outcome” in question).

101. *Id.* at 112.

102. ABA June 2015 Guidance Memo, *supra* note 5 at 5.

103. Hamm, *supra* note 2, at 375.

Standards. This Part (A) first discusses rubrics generally,¹⁰⁴ and then (B) provides a detailed case study of how the UK Law legal writing faculty developed a rubric for its LRW Course.

A. Rubrics Generally

“A rubric is a set of detailed written criteria used to assess student performance.”¹⁰⁵ In other words, in the most general sense, an analytic rubric is a method of setting out the specific expectations for an assignment in a way that divides the assignment into its parts and conveys “a detailed description of what constitutes acceptable and unacceptable levels of performance for each of those parts.”¹⁰⁶ Rubrics can be used to determine a numerical score or letter grade for an assignment through application of the articulated criteria (or descriptions) to student work product.¹⁰⁷ Moreover, given the way rubrics can lay out levels of performance for knowledge, skills, and values, and indicate what competent performance looks like for each, they can also be used to measure student achievement of learning outcomes for purposes of course or law school assessment.¹⁰⁸ The assessment connection is discussed in this Part where needed to understand rubric theory and design, and then more fully in Part V

104. This Article focuses on the analytic rubric, which looks separately at the different relevant characteristics of a performance or product, and not the holistic rubric, which looks collectively at the performance or product with one single overall score or overall impression. Hamm, *supra* note 2, at 375 (citing Allen, *supra* note 77, at 138; BANTA & PALOMBA, *supra* note 12, at 100.) Both may be used by law school faculty.

105. Curcio, *supra* note 32, at 493 (quoting Sophie M. Sparrow, *Describing the Ball: Improve Teaching by Using Rubrics—Explicit Grading Criteria*, 2004 MICH. ST. L. REV. 1, 7 (2004)).

106. DANIELLE D. STEVENS & ANTONIA J. LEVI, INTRODUCTION TO RUBRICS: AN ASSESSMENT TOOL TO SAVE GRADING TIME, CONVEY EFFECTIVE FEEDBACK, AND PROMOTE STUDENT LEARNING 3 (2d ed. 2013). The level of detail provided in a rubric varies by professor. For example, some rubrics focus only on acceptable levels of performance and omit descriptions of unacceptable levels, some describe expectations with specific reference to law or facts at issue in an assignment while others are more general in nature, and some are written just for use by the professor when evaluating the assignment (and not also to be shared with a student). In other words, there is no such thing as a template for the “perfect” rubric. Thus, this Article focuses on general principles for designing a valid, reliable, and fair analytic rubric for use with outcomes assessment.

107. Jessica Clark & Christy DeSanctis, *Toward a Unified Grading Vocabulary: Using Rubrics in Legal Writing Courses*, 63 J. LEGAL EDUC. 3, 7–8 (2013).

108. Curcio, *supra* note 32, at 493. Indeed, many scholars have discussed the benefits of using rubrics as an assessment tool. *E.g.*, SUSKIE, *supra* note 45, at Chapter 9; BEST PRACTICES, *supra* note 8, at Chapter 7; BANTA & PALOMBA, *supra* note 12, at Chapter 12; Clark & DeSanctis, *supra* note 107, at 3–5.

when the connection to the Assessment Standards is explored in more detail.

Rubric design is a detailed process with several stages. First, the designer identifies the levels (or scales) of performance that will be used (e.g., mastery, progressing, and emerging or distinguished, proficient, intermediate, novice).¹⁰⁹ Next, the designer sets out the categories (or dimensions) to be evaluated in the assignment, which are usually tied to one or more learning outcomes for the course (individual student learning) or institution (law school assessment).¹¹⁰ This tie to a learning outcome(s) is important to ensuring the rubric's validity as an assessment measure because the rubric must actually evaluate, or assess, what is being taught.¹¹¹ Under each category, the designer must then draft narratives that explain what constitutes each level of performance.¹¹² This is referred to as criterion-referenced (versus norm-referenced) assessment, which means that competency is measured by looking at whether a student satisfies certain requirements for the dimension that are set by the assessor(s).¹¹³

109. STEVENS & LEVI, *supra* note 106, at 8–9; Curcio, *supra* note 32 at 496–497, 499.

110. STEVENS & LEVI, *supra* note 106, at 10; Clark & DeSanctis, *supra* note 107, at 9–10; Curcio, *supra* note 32, at 499–501.

111. See MUNRO, *supra* note 15, at 106; see also Curcio, *supra* note 32, at 499–501 (providing examples of rubric narratives that are tied to specific learning outcomes). It is also important to make sure the rubric is broken down into a sufficient number of categories so that there are not too many dimensions, or topics, covered in one category. Otherwise, the rubric may become too confusing or cumbersome to use when evaluating a student output that will demonstrate numerous competencies, such as an essay exam or legal document.

112. STEVENS & LEVI, *supra* note 106, at 10–14. In doing so, consider what knowledge, skills, and values students will need to have or develop to successfully complete the tasks associated with the assignment, and identify what types of evidence will show that students have accomplished those tasks (and related student learning outcomes). See *id.* at 29–38. One critique of rubrics as an assessment tool is that their use of categories or narratives are too rigid or standardized. Deborah L. Borman, *De-grading Assessment: Rejecting Rubrics in Favor of Authentic Analysis*, 41 SEATTLE L. REV. 713, 730–31 (2018) (arguing that rubrics cannot capture the “subjective component to grading [legal writing] assignments” like a more holistic evaluation can). However, as discussed in more detail below in Parts IV(B) and V(A), the key is structuring and dividing the rubric categories to allow for capturing variation and nuance in legal analysis where it arises, and drafting the corresponding performance level narratives so they clearly describe the legal reader's common expectations for analytical writing while using the professor's preferred language.

113. SHAW & VANZANDT, *supra* note 4, at 93. Some casebook professors may also use the term “rubric” when referring to the grading tool created for evaluating final exam essays. By definition, however, a rubric is a criterion-referenced assessment tool. Thus, if the grading tool is being used to assign grades in a norm-referenced framework, then it is not really a “rubric” as defined and used in this Article.

Narrative content and clarity are important for purposes of fairness, as the criteria for each performance level must be easily understood by the evaluator (and the student for individual student assessment), and reliability, given that the evaluator must be able to apply the criteria consistently across outputs and at different points in time.¹¹⁴ Consistent application of the assessment measure is particularly relevant for law school assessment, because there are likely to be multiple evaluators involved.¹¹⁵ Finally, if the assignment is also being scored or graded, the designer ends by assigning a narrow point range to each rubric category and each level within that category.¹¹⁶

In short, intentional and thoughtful rubric design can result in a valid, reliable, and fair assessment measure. Section B will flesh these ideas out, and respond to related critiques, using a specific example.

B. Specific Rubric Example

In 2012, UK Law's legal writing faculty set out to design a series of rubrics to use for all seven or eight (given the year) sections of the LRW Course, and did so with two goals in mind. First, the designing faculty wanted a way to reliably and fairly grade the students' major writing assignments, which are standard across all sections. Second, as the Director of the LRW program, I wanted to share whether students were achieving the student learning outcomes for the course as part of a report I was writing to evaluate the success of changes made to the LRW Course. In other words, the legal writing faculty had already engaged in the first stage of outcomes assessment, identifying student learning outcomes for the LRW Course, and we wanted to engage in the second stage by using a rubric as the direct assessment measure for discerning whether our students were accomplishing those learning outcomes.¹¹⁷ While it was a time-intensive endeavor on the front-end,

114. *Id.* at 111.

115. *Id.*; see also SUSKIE, *supra* note 45, at Chapter 15; CARNEGIE REPORT, *supra* note 8, at 170–71; BEST PRACTICES, *supra* note 8, at 243–45.

116. Clark & DeSanctis, *supra* note 107, at 8–11. Again, the Assessment Standards do not require that the underlying assessment source (output) be a graded assignment, much less that the assessment measure also be used for grading. ABA STANDARDS, *supra* note 24, at 3 (“Law schools are not required by Standard 314 to use any particular assessment method.”); *id.* at 24 (“The methods used to measure the degree of student achievement of learning outcomes are likely to differ from school to school and law schools are not required by this standard to use any particular methods.”).

117. The learning outcomes we identified are common ones for a foundational legal research and writing course, including: reading, comprehending, and writing about legal authorities; working with the analytical paradigms customarily used by U.S. lawyers; identifying the expectations of the legal reading audience; effectively organizing the legal

and it has required tweaks along the way, the resulting rubrics are a valuable and successful tool that have been embraced by both the faculty and students who use them.¹¹⁸ The remainder of this Section details the collaborative and thoughtful process the designing faculty used when creating the rubrics, focusing on the rubric used for the final writing assignment of the LRW Course.¹¹⁹

As an initial matter, the designing faculty selected three existing writing assignments that would be the assessment sources for the rubric project. Specifically, we selected two predictive writing assignments that involved rewriting an informal and formal office memorandum in the fall, and one persuasive writing assignment that involved rewriting an appellate brief in the spring.¹²⁰ The appellate brief rewrite is also the final major writing assignment for the year-long course and the score is factored into the students' overall course grade, which means the students' work product would reflect many of the topics taught in the course and students would be motivated to do well on the assignment. This made the corresponding rubric prime for meaningful assessment of whether students had achieved many of the learning outcomes for the LRW Course. Professor VanZandt, who has written extensively on outcomes assessment, agrees that memos and briefs are "excellent," direct, embedded assessment methods that can be used for the dual purpose of grading and assessment.¹²¹ Thus, this

analysis at both the large and small scale levels; creating accurate citations; and using proper grammar and punctuation. See AM. BAR ASS'N SECTION OF THE LEGAL EDUCATION AND ADMISSIONS TO THE BAR, SOURCEBOOK ON LEGAL WRITING PROGRAMS, at 5–12 (Eric B. Easton, et al. eds., 2d ed. 2006) (hereinafter ABA SOURCEBOOK). We added the learning outcomes to our course policies & procedures.

118. The legal research faculty who teach the legal research component of the LRW Course underwent a similar process to design a rubric for the major research assignments, with similar goals in mind. However, that process and resulting rubric exceed the scope of this Article.

119. Although the rubric project began before the Assessment Standards were enacted, and was not developed with those specific standards in mind, the designing faculty did rely on outcomes assessment literature and best practices for rubric design.

120. The rewrites occur after the students have received written feedback on the initial memos or brief and conference with the writing professor about that feedback. While the rewrite assignments are scored and factor into the final course grade, the initial assignments are worth little or no points, because the primary goal is for the students to focus on incorporating the formative feedback into the rewrite. In other words, the initial assignments are what Professor Duhart refers to as "low-stakes assignments" where "[t]he goal is to provide students an opportunity to practice—and even 'fail'—with very little risk." Duhart, *supra* note 44, at 493 (internal quotation omitted); see also Borman, *supra* note 112, at 716 (asserting that removing numbers as evaluation allows students to focus on the feedback rather than the score for purposes of improving analytical writing).

121. VanZandt, *supra* note 95, at 342.

Article will focus on the design process we used for the appellate brief rewrite rubric.¹²²

Next, the designing faculty dove into the large scale organization of the rubric, which is reflected in Figure 1. After some discussion, we settled on the four performance levels (or scales) to use across the top of the rubric—beginning, developing, proficient, and highly proficient.¹²³ With the levels set, it was time to identify the categories to be evaluated in the assignment, and thus included along the left-hand side of the rubric. We started by creating categories for each component or part of the appellate brief assignment. For example, we had categories for the shorter initial parts of the brief, such as the Statement Concerning Oral Argument and the Question Presented, along with longer and more substantive parts of the brief, like the Statement of Facts and the Argument.¹²⁴ Moreover, because the Argument is the most important and complex part of the brief, as it sets out the student's legal analysis (including efforts to incorporate techniques for subtle persuasion), we further broke that part of the brief down into several organizational and substantive categories for the rubric (specifically, deductive organization, advanced organization, rule statements, rule explanations or explanatory synthesis, and application of the rule to the client's facts using rule-based and analogical reasoning).¹²⁵ We ended this phase of

122. That said, we used a similar process for the memo rubrics, using the same four levels of performance and substantially similar narrative content for the organization, content, and mechanics of the legal analysis. This is why students (and faculty) could track progress over the duration of the entire course, which is called “developmental assessment.” VanZandt, *supra* note 95, at 340 (citing Allen, *supra* note 77, at 9); see also BEST PRACTICES, *supra* note 8, at 245–47 (noting development of expertise occurs over time, “and there are stages with discernable differences” that should be communicated to students). The benefits of development assessment are discussed in more detail in Part V.

123. We intentionally declined to use a term like master or mastery, because a first-year foundational course like legal research and writing is not about mastering knowledge, skills, or values. Instead, it is about introducing new, core skills and techniques for our novice legal writers to learn and practice. Later courses are needed to give students a chance for additional practice as they progress toward competency. See DEBORAH MARANVILLE, ET AL., BUILDING ON BEST PRACTICES: TRANSFORMING LEGAL EDUCATION IN A CHANGING WORLD 123 (LexisNexis 2015) (“The best practice is for students to have at least one significant writing experience each semester of law school . . .”).

124. For the memo rubrics, we included the common initial parts of an office memorandum (Issue, Brief Answer, and Statement of the Facts).

125. For the memo rubrics, we did the same thing with the Discussion section of the office memorandum. Again, breaking the rubric categories down into discrete topics, or even sub-topics, ensures that the evaluator is not left trying to assess too many different ideas or techniques within one category, which makes the feedback (and any resulting score) more focused and fair, and thus more likely valid.

rubric design by identifying categories that would apply to the entire brief such as legal citation and formatting. Finally, because the rubric would be used for individual student assessment, we confirmed that each rubric category tied back to one or more of the course learning outcomes.¹²⁶ Doing so ensures the validity of the rubric as an assessment method because there is a direct tie between what is being taught in the course, and what should be reflected in the writing assignment to be assessed by the rubric.¹²⁷

Figure 1: Large Scale Organization of UK Law Appellate Brief Rewrite Rubric

Categories	Beginning	Developing	Proficient	Highly Proficient
Cover				
Introduction				
Statement Concerning Oral Argument				
Statement of Points & Authorities				
Question Presented				
Statement of the Case (Facts)				
Organization of the Argument (CREAC)				
Advanced Organization of the Argument				
Argument Content (Persuasive Headings)				
Argument Content				

126. For example, one of the course learning outcomes states that students should be able “to design the organization of legal analysis using effective, reasoned choices that anticipate the expectations of the legal reading audience and are easy to follow from the perspective of flow and logic.” LRW Course Policies & Procedures (on file with the author). This outcome aligns with the rubric’s two organization categories: deductive organization (following a paradigm such as IRAC or CREAC); and advanced organization (further explored in Figure 2). Another outcome calls for students to be able to “provide accurate citations where needed by employing the conventions of the Bluebook and local citation rules.” *Id.* This outcome aligns with the rubric’s citation category.

127. See Sparrow, *supra* note 105, at 18 (“We may have already identified our learning goals to students in our syllabus and other materials . . . [h]owever, breaking these goals into more specific components that describe *what the students have learned* and *how we know if they have demonstrated that learning forces us to think at a deeper level.*”) (emphasis added); see also, *supra* note 85.

(Applicable Standard of Review and Rule Statements)				
Argument Content (Rule Explanations/ Explanatory Synthesis)				
Argument Content (Rule Applications/ Rule-Based Reasoning and Analogical Reasoning)				
Conclusion				
Clarity & Conciseness				
Mechanics (Grammar & Punctuation)				
Mechanics (Polish)				
Mechanics (Citation)				
Formatting for Brief				

With the rubric categories identified and aligned with the student learning outcomes for the LRW Course, the designing faculty turned to fill in the content of the rubric, which, for us, was the most time-intensive yet affirming aspect of rubric design. In other words, we had to draft the narrative that describes each level of performance for each rubric category. An example can be found in Figure 2. Collaboration was crucial here, because the rubric would be used by all of the legal writing faculty, and thus each needed to understand and agree with the narratives as written in order to ensure consistent, and thus reliable, application of the rubric to the briefs written by their students.¹²⁸ We started by setting out our collective expectations for student work that reflects application of the skill(s) or technique(s) at issue for each rubric category at the beginning, developing, proficient, and highly proficient levels. In other words, we drafted narratives to reflect common heuristic strategies we teach our students for

128. See STEVENS & LEVI, *supra* note 106, at 178 (“Using rubrics created by those with a stake in the program being assessed also begins a much-needed process in changing how assessment is carried out, presented, and acted on.”); see also BANTA & PALOMBA, *supra* note 12, at 32, 102–03 (discussing importance of having high level of consistency among different rubric raters, and noting lack of sufficient local input when discussing potential rubric issues such as inter-rater reliability).

organizing and writing their legal analysis.¹²⁹ This involved anticipating common errors or problems that first-year students often demonstrate on the way to proficiency (for the beginning and developing levels), reaching agreement on what performance evidences proficiency, and deciding what performance would demonstrate the highly proficient level (that is, the ultimate goal for legal writers).¹³⁰ For example, we agreed on what performance would demonstrate high proficiency in using the advanced organizational techniques covered in the course. Next, we agreed on what a paper would look like that demonstrated proficiency in the techniques. Then we talked through how a paper would differ if still in the developing and beginning stages for the same techniques.¹³¹ Figure 2 reflects the narratives for the “Advanced Organization of the Argument” category.

129. As Professor Beazley explains, legal writing faculty teach students “heuristic strategies,” which she “describe[s] as a principle of providing course content that gives students ‘generally effective’ techniques for accomplishing certain common tasks.” Mary Beth Beazley, *Better Writing, Better Thinking: Using Legal Writing Pedagogy in the “Casebook” Classroom (Without Grading Papers)*, 10 LEGAL WRITING 23, 46 (2004). The strategies do not dictate the content, and thus do not give the answer or “wreck the curve,” but instead offer “a set of questions [for the writer] to answer in particular rhetorical situations.” *Id.* at 46, 64–65. As such, our narratives do not “give the answer away” to the students, nor do they necessarily “decrease[] students’ ability to practice critical thinking skills,” which are both critiques cited for rubrics. Borman, *supra* note 110, at 741. Instead, they call on both the students and professors who use them to think more deeply about how certain aspects of the writing assignment compare to the well-stated expectations set out in a relevant rubric category. *See* Curcio, *supra* note 32, at 497 (explaining that “rubrics allow assessment via descriptors of higher-order thinking rather than via correct versus incorrect answers”).

130. *See* BANTA & PALOMBA, *supra* note 104, at 100 (“Well-designed rubrics contain specific descriptive language about what the presence or absence of a quality looks like.”); STEVENS & LEVI, *supra* note 106, at 11 (preferring rubrics that contain “a description of the most common ways in which students fail to meet the highest level of expectations”); Clark & DeSanctis, *supra* note 107, at 8–9 (explaining that “narrative descriptions mirrored the material professors taught in classes leading up to completion of the particular writing assignment”).

131. When creating a rubric for law school assessment, Professors Shaw & VanZandt suggest waiting to draft the narratives until after having read a few student outputs. SHAW & VANZANDT, *supra* note 4, at 142 (discussing how to make a rubric “hot,” or complete, during the implementation stage of outcomes assessment). We effectively did this during the design stage, because when drafting the narratives, we considered what we had seen in appellate brief rewrites submitted by students in past years. *See id.* (discussing the value of experienced teachers with specialized expertise when drafting rubrics for assessment).

Figure 2: Excerpt from UK Law Appellate Brief Rewrite Rubric

Category	Beginning	Developing	Proficient	Highly Proficient
Advanced Organ. of the Argument	<p>Arguments are not ordered logically or with strategy.</p> <p>Roadmap paragraphs are likely missing where needed.</p> <p>Paragraphs likely could be better executed.</p> <p>Topic (thesis) sentences are usually missing or fail to introduce the topic of the paragraph.</p>	<p>Some arguments could be better organized logically or with strategy.</p> <p>Roadmap paragraphs may be missing where needed or could usually be used more effectively.</p> <p>Paragraphing and/or use of strong topic (thesis) sentences could often be improved.</p>	<p>Arguments are ordered logically, but may not always be ordered strategically where possible.</p> <p>Roadmap paragraphs are usually used effectively where needed.</p> <p>A few paragraphs may have been better executed (in terms of length and unity).</p> <p>There likely could be improved use of strong topic (thesis) sentences or evident transitions in a few instances.</p>	<p>Arguments are ordered logically and <i>strategically</i>, such as strongest arguments first, unless there is a threshold matter or logic dictates otherwise.</p> <p>Roadmap paragraphs (umbrella passages) are used effectively where needed.</p> <p>Paragraphing is effective in terms of length and unity. The paragraphs within each CREAC are organized around main ideas, such as the rule or parts of the rule, not the cases.</p> <p>Transitions are used where needed. Topic (thesis) sentences are strong in that they convey main ideas.</p>

One of the most rewarding aspects of this stage of the design process was that the designing faculty realized it was easier to reach agreement

on narrative content than initially anticipated. This gave the group confidence that while we may approach and teach the foundational skills and techniques relevant to a first-year legal writing course in different ways (giving thought both to our student learners and our teaching styles), we not only agreed on the course goals and related learning outcomes, but also on how our students could demonstrate achievement of the outcomes in their written work product. In fact, we regularly reached consensus on the expectations for each performance level for each rubric category.¹³² This is not altogether surprising, given that the heuristic strategies we teach our students are fairly common from professor to professor, and they are tied to the idea that effective legal writing anticipates the expectations of the legal reader.¹³³ Where further discussion did ensue, it was often over precise language to use rather than broad ideas to include. For example, for the advanced organization of the Argument category, some faculty preferred the term topic sentence while others preferred thesis sentence (often based on the term used in a professor's chosen text and classroom terminology). This was an easy fix, however, by drafting a narrative that encompasses both terms, thus satisfying all involved faculty and ensuring all could consistently, and thus reliably, apply the rubric. Refer to Figure 2 above. Thus, rubrics can be designed to avoid the

132. We are not alone in finding more commonality than first expected. See STEVENS & LEVI, *supra* note 12, at 69 (explaining that when several professors who taught the same course (but using different approaches, assignments and texts) sat down to design a rubric, “they differed far less than expected,” and with some discussion and assistance from an outside consultant, were able to produce a rubric acceptable to all); see also *id.* at 24 (describing the reaction of faculty who worked together on a single rubric for a shared assignment as “surprised and reassured to discover that their standards and expectations were not wildly out of line with those of their colleagues”).

133. See Beazley, *supra* note 129, at 53 (explaining that legal writing must consider the reader's needs and expectations when it comes to form, structure and content); Mary Beth Beazley, *Finishing the Job of Legal Education Reform*, 51 WAKE FOREST L. REV. 275, 303, 310 (2016) (discussing legal writing scholarship on the substance of legal writing, which says that students must consider the needs of their readers); see also Beazley, *supra*, note 129 (discussing legal writing professors' common use of heuristic strategies). For example, we all teach a similar heuristic strategy for finding the information that a reader expects from past cases used to support legal analysis (for past case descriptions or case discussions). There are similar expectations across professors for what type of information is necessary to include in the case discussions that make up a rule explanation—namely, the court's holding and the court's reasoning with related trigger facts—even though the actual content to be drafted by the student writer will vary depending on the case, the legal issue being explained, and the legal problem being resolved. Beazley, *supra* note 129, at 46, 68 (explaining the relevance of case descriptions to legal analysis). The narratives we drafted to embody the particular expectations described here are set out in Figure 5.

concerns some have raised about rubrics being too rigid to use for meaningful assessment.¹³⁴ Appropriate and inclusive narrative language also results in a more fair assessment method because the tool must speak the language that students are familiar with and understand.¹³⁵

Finally, because the rubric would also be used to score the appellate brief rewrite assignment, we assigned each rubric category a total number of points possible, as reflected in the rubric excerpt in Figure 3.¹³⁶ The points assigned to a particular category reflect the focus or priority given to the skills and techniques.¹³⁷ In doing so, we considered the relevant importance of the category vis-à-vis the assignment and the related student learning outcomes, the amount of time spent on that topic throughout the course, and the number of opportunities students had to practice the relevant skills/techniques leading up to the final writing assignment.¹³⁸ For example, the Cover Page and Conclusion are both worth one possible point each, and the Question Presented is worth three possible points. In contrast, the content of the Argument is worth twenty-one possible points (divided into five possible points for rule statements, eight possible points for rule explanations,

134. See Borman, *supra* note 112, at 730–31, 740 (asserting that rubrics are too standardized and cannot capture the “subjective component to grading [legal writing] assignments” like a more holistic evaluation can). The point is that the narratives we drafted do not use words like “effective” or “good” in the abstract, but instead more fully convey the legal reader’s expectations for successful use of the skill or technique in question. See Beazley, *supra* note 129, at 66 (discussing the “rules” of analytical writing).

135. See MUNRO, *supra* note 92. Some faculty engage students in designing a rubric, including categories and narrative content, where the professor gets the last word say on what to include or omit in the rubric’s final version. This approach could help with rubric fairness, as students are more likely to understand the narratives they help draft.

136. As noted above, students already received written feedback on an earlier version of their appellate brief, which had little impact on their course grade. Moreover, in addition to the score, students also receive formative feedback, which is discussed more in Part V.

137. One noted concern is that students will focus only on the categories with high point totals, but this has not been my experience in practice. Some professors may even be okay with a student who takes this approach, given that the high point total categories effectively reflect the primary goals of the assignment. And again, if the rubric is only being used for outcomes assessment (not also for grading), the points are omitted.

138. See Clark & DeSanctis, *supra* note 107, at 8 (explaining their goal in designing a rubric for use by multiple faculty teaching different sections of the same first-year LRW course “was to come to a uniform conclusion for each assignment about the value of each [rubric] component related to the time spent teaching it”); see also STEVENS & LEVI, *supra* note 106, at 22 (explaining that assigning points or percentages according to the importance of the rubric category can still message value for substantive and technical aspects of the writing).

and eight possible points for rule applications). We then spread the available points for a category over the four progress levels. We used small ranges in the first three stages (beginning, developing, and proficient) to give professors some flexibility to account for variation or nuance even within papers that fall within the same progress level.¹³⁹ We declined to use a range for the highest progress level—if a paper reflects high proficiency for the category, there is no need to make further gradations.

Figure 3: Excerpt from UK College of Law Appellate Brief Rewrite Rubric

Category	Beginning	Developing	Proficient	Highly Proficient
Advanced Organ. of the Argument	Arguments are not ordered logically or with strategy.	Some arguments could be better organized logically or with strategy.	Arguments are ordered logically, but may not always be ordered with strategy where possible.	Arguments are ordered logically and <i>strategically</i> , such as strongest arguments first, unless there is a threshold matter or logic dictates otherwise.
Five Points Possible	Roadmap paragraphs are likely missing where needed. Paragraphs likely could be better executed. Topic (thesis) sentences are usually	Roadmap paragraphs may be missing where needed or could usually be used more effectively. Paragraphing and/or use of strong topic (thesis)	Roadmap paragraphs are usually used effectively where needed. A few	Roadmap paragraphs (umbrella passages) are used effectively where needed. Paragraphing is

139. See Clark & DeSanctis, *supra* note 107, at 9 (explaining that using a range of points gave professors flexibility to distinguish between two or three papers that all met the narrative criteria for a rubric subcategory, but yet were still “distinguishable from each other as more or less successful given those criteria”). We kept the point range small and contemplated that a professor could award quarter and half points if needed for flexibility. In my experience, students do not try to nit-pick about the individual score for a category or the overall score on the rubric, not even in terms of trying to gain a quarter or half point more. This is likely because the basis for the score is clearly supported by the feedback provided in the completed rubric or supporting written feedback embedded in the related writing assignment, which is discussed in more detail in Part V(A) below.

	<p>missing or fail to introduce the topic of the paragraph.</p> <p>Zero Points</p>	<p>sentences could often be improved.</p> <p>One to two Points</p>	<p>paragraphs may have been better executed organization ally (in terms of length and unity).</p> <p>There likely could be improved use of strong topic (thesis) sentences or evident transitions in a few instances.</p> <p>Three to four Points</p>	<p>effective in terms of length and unity. The paragraphs within each CREAC are organized around main ideas, such as the rule or parts of the rule, not the cases.</p> <p>Transitions are used where needed. Topic (thesis) sentences are strong in that they convey main ideas.</p> <p>Five Points</p>
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It is important to note that while rubrics are a common assessment method used in legal research and writing courses, we are not alone here. Professors routinely design and use rubrics to assess student work in a variety of law school courses.¹⁴⁰ While the number of progress categories and components may vary depending on what learning outcomes are being measured and what type of assessment source (output) is being evaluated, the underlying design process is the same. The content and level of detail will also turn on the designing faculty member and the purpose of the rubric, be it one to distribute to students while the assignment is ongoing, one that is used only by the professor for grading, or one that is designed specifically to assess student learning outcomes.¹⁴¹ For example, Professor Duhart has shared a rubric she designed to evaluate a required practice essay in her Constitutional Law course, which is divided into categories for

140. Curcio, *supra* note 32, at 498 (explaining that rubrics “allow for nuanced assessment of skills acquisition over a wide range of courses as well as a wide range of learning outcomes”).

141. STEVENS & LEVI, *supra* note 104.

format, legal issue, statement of the rule, application of the rule to hypothetical facts, conclusion, and writing style.¹⁴² The narratives focus just on what the professor is looking for in a response (that is, what is expected) in terms of student performance, and they are specific to the law and legal authorities relevant to the question regarding the commerce clause.¹⁴³

In short, the message here is that there could be a number of faculty members with experience designing or using potentially relevant rubrics in their classroom. Thus, law schools should look broadly across the faculty for information that could prove useful to responding to the Assessment Standards. Some specific ideas for how a law school might use existing expertise and resources like that mentioned here will be addressed in more detail in Part V below.

V. RESPONDING TO THE ABA ASSESSMENT STANDARDS

This final Part shares ideas on how a rubric like the examples described in Part IV can also be used when responding to the Assessment Standards, even though originally created for another purpose. Doing so can save precious time in a busy law school while also resulting in meaningful assessment. Beginning from within, so to speak, could also help with buy-in from faculty, which is important when trying to build a culture of assessment in a law school.¹⁴⁴

It is worth reemphasizing that the primary example used in Part IV is not meant to suggest by any means that all assessment work should fall to the legal research and writing faculty at a law school, faculty who often are already asked to take on more than their fair share of institutional work and while being paid less and having less security or status. Rather, to create a productive and meaningful culture of assessment, assessment experts—and the ABA—counsel that all faculty should be involved.¹⁴⁵ And as explored more in this final Part, a variety of law school faculty could have knowledge and experience that can contribute to the outcomes assessment endeavor.¹⁴⁶

142. Duhart, *supra* note 44, at 513–14 and Appendix E.

143. Duhart, *supra* note 44, at Appendix E.

144. Cunningham, *supra* note 4, at 424 (“One way to combat faculty perceptions that assessment is externally driven is to use data from locally developed and course embedded assessments rather than tests that are developed from the outside.”).

145. SHAW & VANZANDT, *supra* note 4, at 47–48; ABA June 2015 Guidance Memo, *supra* note 5, at 3.

146. Professor Funk reiterated the call to avoid reinventing the wheel in her recent text, saying “[t]he goal is not to spend an inordinate amount of time and energy creating something to be used for the sole purpose of assessment, but rather to harness what

Moreover, while rubrics are by no means a magic bullet for outcomes assessment (or grading, for that matter), and they may not be appropriate for evaluating every assignment or for assessing every learning outcome, they can play an important role in responding to the ABA's assessment mandate. With that in mind, this Part begins in section (A) with a discussion of how a rubric like the examples discussed in Part IV can be used in responding to Standard 314's call for individual student assessment that involves formative assessment, and then turns in section (B) to suggest how those rubrics could also be adapted for use in conducting law school assessment as required by Standard 315. While the goals of individual student assessment and law school assessment differ, there is some relationship between the two, and this Article seeks to show how each can serve the other. This is particularly helpful in busy law schools with limited resources. Information gained from law school assessment can "trickle down to benefit students at the individual level" because the faculty may opt to make changes to curriculum or teaching methods in light of that information.¹⁴⁷ Moreover, "the outputs gathered as a result of individual student assessment can be repurposed to assist in [law school] assessment[.]" and most student outputs (writing assignments, exams, etc.) will already be embedded in courses.¹⁴⁸

In addition, the rubric project described in Part IV serves as just one specific example of how a law school can benefit from the existing work and experience of its own, and even share that work with other schools who are faced with the same requirements, challenges, and opportunities afforded by the Assessment Standards. It is not meant to be a blue print that will work for every law school, but instead, to add to "the much-needed dialogue of shared experiences and methodologies of assessing student learning outcomes and to show how simple, efficient, and valuable the process can be."¹⁴⁹

A. Individual Student Assessment—Standard 314

As discussed above, Standard 314 calls for law schools to engage in individual student assessment that includes formative assessment.¹⁵⁰ That is because the ABA guiding principle for outcomes assessment calls for schools to "shift the emphasis from what is being taught to

[professors] are already doing in the classroom to provide the [assessment] information you need." FUNK, SUPRA note 60, at 63–64.

147. SHAW & VANZANDT, *supra* note 4, at 16.

148. *Id.*

149. Roberts, *supra* note 94, at 459.

150. ABA STANDARDS, *supra* note 24, at 23.

what is being learned[.]”¹⁵¹ Rubrics like the ones described in Part IV can be a meaningful way to respond to Standard 314. In addition to (or even lieu of) using rubrics to grade, “[r]ubrics . . . are also valuable pedagogical tools because they make us more aware of our individual teaching styles and methods, allow us to impart more clearly our intentions and expectations, and provide timely, informative feedback to our students.”¹⁵²

As an initial matter, providing a rubric to students before the assignment is due gives them clear notice of the professor’s expectations regarding performance, and can form the basis of formative feedback.¹⁵³ This also responds directly to the fairness principle of assessment method design, because the content of a rubric can help level the playing field for all students by translating what teachers are talking about in the classroom, regardless of background and experience, and while there is time to ask questions about the rubric’s content before the assignment is due.¹⁵⁴ For example, UK Law students receive the appellate brief rewrite rubric well before the writing assignment is due so that they can get a sense of professor expectations for the assignment, specifically using the narratives in the highly proficient progress level of each rubric category as a “roadmap” of what to strive for in writing and rewriting the brief.¹⁵⁵ We also use class time to discuss the narratives in the highly proficient progress levels and their connection to legal writing techniques or heuristic strategies students are trying to use when writing the assignment. This way students can more clearly see the connection between what they are learning and what they will be evaluated on.¹⁵⁶ One colleague gives her class an anonymous excerpt of the Argument section from a former student’s

151. ABA June 2015 Guidance Memo, *supra* note 5, at 3.

152. STEVENS & LEVI, *supra* note 106, at 15.

153. Clark & DeSanctis, *supra* note 107, at 8, 16. As discussed above, when rubrics convey heuristic strategies that students should try to apply, versus just the content sought in an assignment or exam answer, there is no risk that they will somehow give students “the answer” if provided in advance. *Supra* note 129.

154. See STEVENS & LEVI, *supra* note 106, at 26.

155. See STEVENS & LEVI, *supra* note 106, at 19; see also Sparrow, *supra* note 105, at 9, 23, 35 (noting that this approach works for a writing assignment or a final exam in all types of courses). Thus, contrary to the critique that providing a rubric to students before the assignment provides information that will “compromise[] the quality of teaching and standardize[] learning[.]” Borman, *supra* note 112, at 741, providing the information in advance can actually encourage active learning when students use the rubric to identify and raise questions with the professor.

156. STEVENS & LEVI, *supra* note 106, at 19 (“[B]ecause we discuss the rubric and thereby the grading criteria in class, the student has a much better idea of what these details mean.”).

appellate brief, and then has the students complete the relevant rubric category for the sample as part of an in-class exercise to evaluate the way the writer used techniques for proving the rule statement using past cases to apply it (that is, to identify what progress level the students would assign to the paper for the rule explanation category of the rubric).¹⁵⁷ The exercise often raises questions students have about their own working draft, which are addressed globally in class or individually during office hours (and either way, before the assignment is due). This kind of exercise responds directly to the goal of using formative feedback as a way for students to “become ‘metacognitive’ about their own learning[.]”¹⁵⁸

Second, a completed rubric that is returned to the student after the assignment is submitted responds directly to Standard 314’s call for formative assessment, because it provides individual feedback about that student’s performance on a specific assignment and while the course is ongoing.¹⁵⁹ Take the appellate brief rewrite from Part IV as an example. The completed rubric conveys the progress level achieved for each category of the rubric, and thus for each underlying skill or technique discussed in the narrative for that category.¹⁶⁰ And each rubric category is tied to one or more student learning outcomes for the LRW Course.¹⁶¹ When completing the rubric, the professor can engage with the narrative text to make sure the student learns why the paper reflects a particular progress level, which is the most meaningful kind of formative assessment.¹⁶² Figure 4 shares an example of one way to provide that meaningful feedback in an excerpt of a completed rubric (specifically, for a student’s use of advanced organization in the Argument). Thus, contrary to concerns raised by Professor Borman in

157. Figure 5 depicts the rubric excerpt that the students use for this exercise.

158. CARNEGIE REPORT, *supra* note 8, at 173; *see also* ABA June 2015 Guidance Memo, *supra* note 5, at 3 (discussing ABA reliance on the CARNEGIE REPORT).

159. STEVENS & LEVI, *supra* note 106, at 17–18, 78–84; *see also* Clark & DeSanctis, *supra* note 107, at 13–14 (citing Sparrow, *supra* note 105, at 8).

160. STEVENS & LEVI, *supra* note 106, at 19 (“The highest level descriptions of the [rubric categories] are, in fact, the highest level of achievement possible, whereas the remaining levels, circled or checked off, are typed versions of the notes we regularly write on student work explaining how and where they failed to meet that highest level.”). And as discussed above, each rubric category is tied to one or more student learning outcomes for the course.

161. *Supra* note 117.

162. STEVENS & LEVI, *supra* note 106, at 19 (“The student [] receives all the necessary details about how and where the assignment did or did not achieve its goal, and even suggestions (in the form of the higher levels of [performance]) as to how it might have been done better.”); *see also supra* Part II(B)(1) (discussing most meaningful formative assessment).

her article critiquing rubrics as an assessment tool,¹⁶³ the example shows how the existing narrative text is helpful to the professor and student, and how the professor can add to it as needed to account for individuality and respond to nuances in the student's work product.¹⁶⁴

Figure 4: Sample Excerpt of a Completed Appellate Brief Rewrite Rubric

Category	Beginning	Developing	Proficient	Highly Proficient
Advanced Organ. of the Argument	Arguments are not ordered logically or strategically.	Some arguments could usually be better organized logically or strategically.	Arguments are ordered logically, but may not always be ordered with strategy where possible.	Arguments are ordered logically and with strategy, such as strongest arguments first, unless there is a threshold matter or logic dictates otherwise.
Five Points Possible	Roadmap paragraphs are likely missing where needed.	[Refer to my related margin comment in your paper.]	Roadmap paragraphs are usually used effectively where needed.	Roadmap paragraphs (umbrella passages) are used effectively where needed.
Two Points Earned	Paragraphs likely could be better executed.	Roadmap paragraphs may also be missing where needed or could usually be used more effectively.		
	Topic (thesis) sentences are usually missing or fail to introduce the topic of the paragraph.			
	Zero Points			

163. Borman, *supra* note 112, at 740.

164. The relevant part(s) of the narrative is underlined, and additional text is added in blue, bracketed text. And again, the completed rubric is just one aspect of the formative assessment we provide to students. We also engage directly with the student's text using margin comments, which is usually tied to the rubric categories (and related narratives). See STEVENS & LEVI, *supra* note 106, at 18 ("The use of [a] rubric does not, of course, preclude notes specific to the student that can be placed on the rubric, the paper itself, or elsewhere."). Thus, we never feel constrained by the rubric when offering feedback on the nuances of the law or facts for a particular writing assignment, or about the student's legal analysis, which can be noted on the rubric or the student's paper.

		<p>[You include a roadmap, but it is missing helpful visual cues when stating the overall rule of law.]</p> <p>Paragraphing and/or use of strong topic (thesis) sentences could often be improved.</p> <p>[Your paragraphs are organized around ideas and each only takes on one main idea, however, you are usually missing a topic sentence for your rule explanation (“E”) paragraphs and sometimes also for your rule application (“A”) paragraphs.]</p> <p>One to two Points</p>	<p>A few paragraphs may have been better executed organizationally (in terms of length and unity).</p> <p>There likely could be improved use of strong topic (thesis) sentences or evident transitions in a few instances.</p> <p>Three to four Points</p>	<p>Paragraphing is effective in terms of length and unity. The paragraphs within each CREAC are organized around main ideas, such as the rule or parts of the rule, not the cases.</p> <p>Transitions are used where needed. Topic (thesis) sentences are strong in that they convey main ideas.</p> <p>Five Points</p>
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In addition, the structure of the appellate brief rubric allows the professor to account for variation within an individual paper, and the content ensures the student appreciates the complexity of legal analysis. First, the rubric is designed so that the professor can signal where the student's paper demonstrates one progress level in some aspects of a rubric category and a different progress level for others.¹⁶⁵ Figure 5 provides an example of this fairly common situation. Here, the student demonstrated proficiency in discussing the relevant information in most of the case illustrations included in the rule explanations.¹⁶⁶ However, the choice of cases used in supporting the legal arguments was still developing, because there were more helpful binding cases in some instances and helpful persuasive authority could have been used to supplement binding authority in others. The example also shows that a professor can complete the rubric in a way that uses the existing narrative as a start, and can then add to that language as needed to clarify the particular student's performance (including reference to related comments the professor embedded in the margins of the student's paper to engage directly with the text). The substance of the example also shows that, notwithstanding Professor Borman's stated concern with rubrics, not all rubrics boil down to "[a] checklist [that] "encourages one-dimensional, black-and-white thinking" or a document that makes the legal writing process look "neat" or overly simple.¹⁶⁷ Thus, the process of completing the rubric, along with how it was structured when first designed, work together to allow for meaningful formative assessment.

165. See *supra* note 139. Thus, a rubric with this structure can react to variation in a student's paper even when one rubric category captures more than one idea or technique, directly responding to a concern Professor Borman has raised when it comes to using rubrics for assessment. Borman, *supra* note 112 at 740. And if the rubric is also used for scoring, then the point range will also afford flexibility here. See *supra* note 139.

166. The reader's expectation regarding the content of a rule explanation, and heuristic strategies that legal writing professors teach to help students in discerning and writing about this information can be found above in notes 127 and 131.

167. Borman, *supra* note 112, at 735, 741.

Figure 5: Sample Excerpt of a Completed Appellate Brief Rubric (In Between Progress Categories)

Category	Beginning	Developing	Proficient	Highly Proficient
<p>Content of the Argument (Rule Explanations)</p> <p>Eight Points Possible</p> <p>4.75 Points Earned</p>	<p>Binding authority and persuasive authority could both be used more effectively.</p> <p>Additional research is needed.</p> <p>An explanation of the rule is completely missing in one or more instances, and where one is included, it likely could be more accurate or complete.</p> <p>Zero to one Point</p>	<p>Binding authority is only sometimes used effectively where available, and persuasive authority could also be more effectively used to supplement binding authority where gaps exist.</p> <p>Additional research is most likely needed.</p> <p>[I offered specific thoughts on this in margin comments, especially in part I(A) of the Argument.]</p>	<p>Binding authority is usually used effectively where available, and persuasive authority is often used effectively to supplement binding authority where gaps exist.</p> <p>The statement of the rule is explained in each section and sub-section (where applicable), but the explanation could be more complete or effective in a few instances.</p> <p>That said, most explanations include accurate, sufficient information about the</p>	<p>Binding authority is used effectively where available, and persuasive authority is used effectively to supplement binding authority where gaps exist.</p> <p>For each section and sub-section (where applicable) of the Argument, the statement of the rule is explained in a sophisticated manner through well-reasoned and well-written explanatory synthesis that includes an accurate discussion of the relevant</p>

		<p>The statement of the rule in a section or sub-section (where applicable) could usually be better explained. In other words, only some case discussions include accurate, sufficient information about the authorities.</p> <p>Two to four Points</p>	<p>authorities used (for prior cases, this means including the relevant facts/trigger facts, reasoning, and holding).</p> <p>[See margin comments for examples of where you have been complete and a few instances where you could be more complete.]</p> <p>Five to seven Points</p>	<p>information from the authorities (for prior cases, this means including the relevant facts/trigger facts, reasoning, and holding).</p> <p>Eight Points</p>
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Moreover, the UK Law rubric project uses the favored approach of providing multiple formative assessments in the same course.¹⁶⁸ As noted in Part III(B), the designing faculty use a similar rubric at three different points in the LRW Course: the rewrite of each of the two major assignments in the fall and the appellate brief rewrite in the spring.¹⁶⁹

168. See *supra* Part II(B)(1). Use of multiple formative assessments methods that help students understand and then correct issues with legal analysis and legal writing is nothing new to legal research and writing courses like UK Law's LRW Course (the same goes for other applied or experiential courses). See MUNRO, *supra* note 15, at 16 (noting that formative assessment has long been a part of clinical and legal writing programs in American law schools); see also Hamm, *supra* note 2, at 377 (stating that "skills professors have long been committed to the use of formative assessment"); Susan Hanley Duncan, *The New Accreditation Standards Are Coming to a Law School Near You—What You Need to Know About Learning Outcomes & Assessment*, 16 LEGAL WRITING 605, 621, 622 n.66 (2010) ("Traditionally, legal writing classes are designed applying many of the concepts found in the assessment literature and are excellent models to imitate.") (citing other relevant articles in note 68).

169. First-year legal research and writing courses usually give student a series of writing assignments (often of increasing complexity) over the duration of the course, and

The rubrics use the same four progress levels, and they include similar categories and corresponding narratives for the organization, content, and mechanics of the legal analysis.¹⁷⁰ This way students can use the completed rubrics for the fall assignments to improve their learning while the course is still ongoing in the fall and spring, which is known as developmental assessment.¹⁷¹ Each completed rubric shows a student which rubric categories are marked as beginning or developing, which tells the student where to focus on further practicing the skills and techniques outlined in the relevant categories (and ideally also seek professor assistance along the way) when completing future writing assignments in the course.¹⁷² For example, a student's completed rubric for the formal office memo rewrite may indicate that the student's attempt to explain the rule of law is still developing because the discussions of past cases to apply the rule could usually be more accurate or complete. The student can prioritize this important aspect of legal analysis when writing the appellate brief in the spring. The student can seek feedback on this topic in the initial version of the appellate brief, and then has the chance to incorporate that feedback in the rewrite. The excerpt of the completed rubric for the appellate brief rewrite, shown in Figure 5 above, confirms that the extra focus and practice paid off by indicating that the student's rewrite demonstrates proficiency in this technique because most case discussions were complete and accurate.

Perhaps just as important, however, is that students can use the completed rubrics to self-discover their effective use of skills and techniques where a professor has marked the progress level for a

the professor critiques each assignment (in writing or orally during a student conference) with an eye toward how the students can incorporate the feedback into a rewrite of that assignment or transfer the feedback to the next writing assignment in the course. Thus, the feedback provided encourages the students to grow and learn from their own writing strengths and weaknesses while the course is ongoing. See ABA SOURCEBOOK, *supra* note 117 at 24; see also Beazley, *supra* note 129 at 47–49 (discussing the use of writing process theory in legal writing courses, where the professors “intervene in their students’ writing before the final draft, so they can give students feedback on their research, writing and thinking”).

170. The key difference is that the fall rubrics also include categories for the other parts of the memo, while the spring rubric omits those categories and adds in categories for the parts of the appellate brief (and enhances some narratives to reflect the transition to rhetorical writing techniques where relevant). Refer also to the discussion about the fall assignment rubrics, *supra* note 125.

171. *Supra* note 122.

172. See STEVENS & LEVI, *supra* note 106, at 20 (explaining that students can use the rubrics from completed assignments to draw their own conclusions about weaknesses in their work and identify plans for improvement, which “is a form of intrinsic motivation”).

certain category as proficient or even highly proficient (especially where that marks progress from an earlier assignment in the course). This information can bolster the student's confidence when using the relevant techniques in future assignments. For example, when it comes to the completed rubrics for the fall assignments in the LRW Course, students have confidence to apply their "proficient" techniques to the appellate brief assignment in the spring, and they may also transfer that confidence into the energy needed to push themselves to move to the next progress level on other skills and techniques that are still developing or perhaps even beginning.¹⁷³ And when it comes to the completed appellate brief rewrite rubric, where categories are marked as proficient or even highly proficient, students are more likely to enter their summer jobs and later law school courses with confidence they can successfully apply the skills and techniques related to those categories.

It is important to stop and note that not all formative feedback need be this detailed or individualized in order to be meaningful, and doing so may not be possible given the nature or size of a course. Indeed, a variety of law school courses can include formative assessment methods, and some casebook professors are already using such methods in their classes. For example, Professor Curcio has assigned a complaint drafting exercise in her Civil Procedure classes, which calls on students "to understand and apply the procedural law of complaints as well as tort law concepts of negligence, negligent hiring and retention, and respondeat superior."¹⁷⁴ She has done the exercise as both graded and ungraded, and in both instances, students receive detailed rubrics.¹⁷⁵

173. Thus, to respond to concerns raised by Professor Borman in her recent critique of rubrics, when properly designed and implemented by faculty, this assessment tool can be used by students to encourage critical thinking and aid in the "transfer of learning" through self-reflection, and thus rubrics can respond to one of her seven principles for good feedback. See Borman, *supra* note 112, at 733, 744–45; see also STEVENS & LEVI, *supra* note 112, at 21 ("Because of the rubric format, students may notice for themselves the patterns of recurring problems or ongoing improvement in their work, and this self-discovery is one of the happiest outcomes of using rubrics."); Sparrow, *supra* note 105, at 23 (explaining that "rubrics encourage students to become metacognitive, or reflective, independent learners.").

174. Curcio, *supra* note 46, at 163–64 (explaining that the assignment also "served as a learning tool for other procedural concepts we covered during the semester").

175. Curcio, *supra* note 46, at 163–64, 174. Other ways professors may already incorporate formative feedback in their course include by assigning an in-class quiz (multiple choice or short answer), a client advisory letter, a take-home essay question, or a mid-term exam, and then providing feedback on the students' performance through such methods as an annotated model answer, group discussion regarding strengths and weaknesses of answers, or individual feedback in rubric or narrative form. *E.g.*, Curcio, *supra* note 46; Field, *supra* note 46. Other professors may assign third party quizzes or exercises to be completed online outside of class, such as TWEN quizzing or CALI lessons,

Moreover, even if individual feedback is provided using a rubric, it need not be as detailed as the appellate brief rubric. For example, in addition to the final exam in an insurance law class, students could also draft a client advice letter during the course and receive written feedback on the assignment.¹⁷⁶ A rubric for this type of assignment would not require nearly as many categories as an appellate brief involving specific formatting requirements and multiple legal issues, and could even be further limited only to feedback on the substance of the analysis (given the likely student learning outcomes for the course).¹⁷⁷ And these are just examples. Law schools should survey their faculty to discern what types of formative assessment methods are already being used, by whom, and for what courses, and thus what existing resources and expertise may be useful for compliance with Standard 314. The key is that students receive meaningful feedback while the course is in progress, and thus while there is still time to improve student learning before the final exam (which is more likely to be summative and norm-referenced).¹⁷⁸

Third, depending on how a rubric is designed and used, a completed rubric can serve as formative assessment even when it evaluates a final assignment in a course. The ABA defines formative assessment methods to include those that provide meaningful feedback at different points in the student's course of study (in addition to different points in the same course).¹⁷⁹ In other words, some summative assessments may even offer the type of feedback that promotes student learning.¹⁸⁰ When

which can also provide feedback to students. Field, *supra* note 46 at 431–32 & n.200 (mentioning CALI QuizWright).

176. MUNRO, *supra* note 15, at 16.

177. By way of further example, the rubric example shared by Professor Duhart (discussed above in Part III) is only a page and a half in length, focusing on identifying where the student's work product satisfies her expectations for the Constitutional Law practice essay (and not also where the assignment is beginning or developing). Duhart, *supra* note 142, at Appendix E.

178. ABA STANDARDS, *supra* note 24.

179. ABA STANDARDS, *supra* note 24, at 23 (defining formative assessment methods as “measurements at different points during a particular course or at different points over the span of a student's education that provide meaningful feedback to improve student learning”) (emphasis added).

180. Duhart, *supra* note 44, at 497 (noting that “the terms ‘formative’ and ‘summative’ apply not to the actual assessments but rather the functions they serve”); see also Carnegie Mellon University Eberly Center for Teaching Excellence & Educational Innovation, *What is the difference between formative and summative assessment?*, <https://www.cmu.edu/teaching/assessment/basics/formative-summative.html> (lasted visited June 15, 2019) (“Information from summative assessment can be used formatively when students or faculty use it to guide their efforts and activities in subsequent courses.”).

it comes to the appellate brief rewrite rubric, students can use their completed rubric for the final assignment in the LRW Course to identify where their skills are not yet proficient, and then use this information when prioritizing where they should seek additional practice afforded by future legal writing assignments given in other law school courses and summer jobs. For example, a completed rubric for the appellate brief rewrite may indicate that the student's paper demonstrates proficiency in stating and explaining legal rules, but the student's use of analogical reasoning to support the application of the rule to the client's facts may still be developing. This gives the student a specific priority to focus on and continue to practice while the student's course of study is still ongoing (even though the present course has come to an end).¹⁸¹ And that student can even refer back to the rubric for a reminder of how to demonstrate rule application that is highly proficient.¹⁸²

Furthermore, the designing faculty have discovered other benefits in using the rubrics both before and after the students complete the relevant writing assignment in their LRW Course. I will offer a few examples. When commenting on an earlier version of one of the three relevant assignments, we often use narrative language from the rubric that will be used to evaluate the assignment rewrite. This helps ensure that what we are using the initial assignment to teach, in terms of legal writing skills or techniques, is what we intend to evaluate in the rewrite. Doing so confirms the validity of the rubric.¹⁸³ The designing faculty have also commented that the rubric aids in consistently evaluating all of their students' assignments, which is relevant to the

181. It is true that most casebook faculty do not complete, much less share with their students, an analytic rubric like this one when grading final exams, because they use norm-referenced assessment. It exceeds the scope of this article to argue that all faculty should use criterion-referenced benchmarks or incorporate formative assessment into their courses. Doing so is neither required by the ABA nor realistic. This Part of the article instead focuses on where faculty may already be engaging in assessment practices that could translate to, or be adapted for, the type of formative assessment contemplated by Standard 314. I offered some examples above where casebook faculty may already be engaging in formative feedback (or could be) while the course is ongoing. My goal here is simply to get faculty thinking about the fact that even feedback offered at the end of a course (instead of just a score or grade) can still prove meaningful for other points in time in the student's course of study, and some of us may already be trying to do this.

182. See STEVENS & LEVI, *supra* note 106, at 19 ("The demand for an explanation of the highest level of achievement possible . . . is fulfilled in the rubric itself."). Moreover, if the same or a substantially similar rubric was used in advanced legal writing courses to evaluate and assess a student's performance (and thus ongoing student learning) in applying the relevant skills or techniques, then the rubric itself continues to offer additional formative feedback.

183. See sources cited *supra* notes 82–83.

assessment method's reliability.¹⁸⁴ And as discussed above in Part III, a valid and reliable assessment method is also more likely to be a fair one.¹⁸⁵ Moreover, many of the designing faculty use the rubric to jumpstart or enhance deeper conversations with students about their legal analysis,¹⁸⁶ which is yet another illustration of how a rubric can encourage critical thinking.¹⁸⁷

Finally, the completed rubrics have offered the designing faculty a reliable way to assess whether and where student learning has occurred—for each assignment and upon completion of the LRW Course.¹⁸⁸ Doing so responds directly to Standard 314's call to engage in individual student assessment.¹⁸⁹ As an initial matter, a professor can compare the student's first completed rubric in the fall to the second completed rubric in that same semester to determine if (and where) the student is making progress during the course. For example, if the completed rubric for the first memo assignment indicates that a student is beginning or developing when it comes to synthesizing and stating a complete rule statement, the professor can compare to the progress level earned on the rule statement category on the rubric completed for the second memo assignment to see if there was improvement (to developing or proficient). If further progress is needed, there is still time to engage with the student while the course continues in the

184. See sources cited *supra* notes 84–88.

185. See sources cited *supra* note 90.

186. For example, I review the completed rubric in advance of and during an individual student conference about the assignment. The review gives me a quick reminder of the particular student's strengths and areas for further progress (given that papers can run together depending on the number of students I have in a given year). I can also engage with the completed rubric itself during the conference, which can be particularly helpful for the student who says something like, "I don't have any questions about your feedback," or "I am disappointed in my score," when it is clear the student has not dug deeper into the specific feedback provided to generate questions or to try to understand the basis for the score. Focusing on the written feedback helps move the student beyond the score and to the skills and techniques underlying that score that matter when it comes to understanding what the student has learned and still needs to learn. See Sparrow, *supra* note 103, at 30–31 (explaining how rubrics can enhance conversations between students and professors about performance and grades).

187. STEVENS & LEVI, *supra* note 106, at 21 ("Used in conjunction with good academic advising, rubrics can play a major role in contributing to students' development of a more scholarly form of critical thinking—that is, the ability to think, reason, and make judgments . . .").

188. See STEVENS & LEVI, *supra* note 106, at 20 ("Using rubrics for overall assessment as well as immediate grading meets the demand . . . for determining whether a student's work is actually improving over time.").

189. ABA STANDARDS, *supra* note 24, at 23.

spring.¹⁹⁰ Moreover, the professor can use the completed appellate brief rewrite rubric to determine whether the student achieved the learning outcomes for the LRW Course. Again, each rubric category is tied to one or more learning outcomes for the course, so the professor would look to see if the student achieved the proficient progress level (or higher) for each category (and thus related student learning outcome).¹⁹¹ In contrast, the overall score that the student earned on the assignment (the sum of the points earned for each rubric category) only tells a professor if the student's overall performance on the final assignment in the course was below average, average, or above average overall. In other words, the score only says how the student compares to his/her peers, which is norm-referenced assessment, while the progress levels provide the criterion-referenced assessment that is more relevant for outcomes assessment.¹⁹²

In sum, rubrics can serve as a valuable formative assessment tool when responding to the ABA's call for individual student assessment. And there are a variety of ways that rubrics can be used to make individual student assessment meaningful. Before law schools think they must start from scratch or reinvent the assessment wheel in its entirety, they should take the time to discern where existing knowledge and resources can at least serve as a starting point when responding to Standard 314, even if those resources were not specifically created with the Assessment Standards in mind.

190. The collective rubric information can also facilitate reflection and action by the professor. For example, I begin the second semester of my LRW Course with a collective view of the students' completed rubrics from the fall. I can identify if a majority of students are still in the developing level of a rubric category, especially on a technique I expected to see more progress on given the focus in the fall, such as, deductive organization using IRAC or CREAC as a guide, or synthesizing and stating legal rules. See STEVENS & LEVI, *supra* note 106, at 25–26 (“[C]ollected rubrics provide a record of the specific details of how students performed on any given task, allowing us to quickly notice and correct any across-the-class blind spots or omissions.”); see also Sparrow, *supra* note 105, at 27–28 (discussing ways rubrics provide helpful data about teaching). If so, I still have time to alter teaching plans to provide further global guidance and practice on the relevant topic(s) before moving on to the more advanced topics to be covered in the spring.

191. For purposes of individual student or course assessment, the designing faculty reached consensus on the relevant assessment benchmark for the LRW Course. See SHAW & VANZANDT, *supra* note 4, at 93, 125 (explaining that a benchmark in this context is “based on whether a student satisfies certain prerequisites set by the assessor[.]” and thus in theory, every student should be able to reach the benchmark (or every student could fail to meet it)). Because the LRW Course is an introductory one, we concluded that the goal for our students would be to achieve proficiency in the rubric categories. *Supra* note 123.

192. See *supra* notes 49 and 61.

B. Law School Assessment—Standard 315

Rubrics can serve dual assessment purposes by also responding to Standard 315, which requires law schools to “conduct ongoing evaluation[s] of the law school’s program of legal education, learning outcomes, and assessment methods[.]”¹⁹³ This Part will also use the UK Law’s rubric project as the primary example for illustrating how an existing rubric can prove helpful here, but as noted above, it is not meant to be a blue print for every law school.

First, an existing rubric could be used as an embedded assessment measure for law school assessment that involves collecting and reviewing a sampling of outputs from several related courses. As noted above, Standard 302 specifically mandates law schools include “[l]egal analysis and reasoning,” as well as “written . . . communication in the legal context” in the law school learning outcomes they establish.¹⁹⁴ Thus, the UK Law rubric described in Part IV, which measures achievement of course learning outcomes related to legal analysis and reasoning, as well as written communication, can also be used as part of the law school’s required evaluation of “the degree of student attainment of competency in the [corresponding law school] learning outcomes[.]”¹⁹⁵ In other words, in addition to using the appellate brief rewrite rubric to conduct individual student assessment for the LRW Course, it could also be used as the common rubric for assessing a sampling of outputs (student writing assignments) embedded in another course or a series of courses¹⁹⁶ that align with the two above-identified law school learning outcomes required by Standard 302.¹⁹⁷ Courses likely to have relevant assessment sources include advanced legal writing courses and other upper-level courses that build on the legal analysis and persuasive legal writing techniques that are first introduced in the LRW Course.¹⁹⁸ To be clear, the rubric would not have

193. ABA STANDARDS, *supra* note 24, at 23.

194. ABA STANDARDS, *supra* note 24, at 15.

195. ABA STANDARDS, *supra* note 24, at 23. This would be just one viable component of a more robust institutional assessment plan, as it is best practice to use multiple assessment measures of different types. *E.g.*, SHAW & VANZANDT, *supra* note 4, at 112 (discussing triangulation); *see also* FUNK, *supra* note, 60 at 32–33, 69 n.7, and 75 n.3.

196. The selection of assessment sources and use of sampling in law school assessment is discussed in Part III above.

197. *See* Curcio, *supra* note 32, at 497–98 (“[R]ubrics acknowledge that learning develops across multiple courses, over time, and the learning process varies from student to student.”).

198. Relevant courses include advanced legal writing, seminars, advanced appellate advocacy, and other “writing experience[s] after the first year” as required by ABA Standard 303(a)(2), which is where techniques and skills first introduced in a first-year

to be used to grade the assignments embedded in these courses. Instead, the focus here is on how the rubric could serve as one possible assessment measure for purposes of conducting law school assessment of the relevant learning outcomes.¹⁹⁹

Moreover, even where an existing rubric requires adaptation before serving as a common rubric for law school assessment, it can still provide a solid foundation to work from so that faculty are not starting from scratch.²⁰⁰ As part of this adaptation process, it will be important to bring in other relevant faculty to work along with the one(s) who designed the existing rubric.²⁰¹ In other words, the law school should involve faculty who teach the courses with identified student outputs to be used in assessing achievement of a particular law school learning outcome and those who will use the rubric when conducting the related assessment.²⁰² That is because there must be a common understanding of, and agreement on, student performance expectations in terms of what is competent and not competent, as well as the related rubric narratives that will measure such performance.²⁰³ However structured, this larger collaboration, just like the collaboration among the UK Law legal writing faculty that is described in Part IV(B), will help ensure that the adapted common rubric is valid and fair, and that the results

legal research and writing courses are likely to be covered and practiced in more depth. ABA STANDARDS, *supra* note 24 at 16; *see supra* note 73.

199. Curcio, *supra* note 32, at 503 (emphasizing that professors do not change what they test or how they grade students, and explaining that the approach is for professors “[i]n courses designated for outcomes measurement” to add an additional step after grading to “complete an institutional faculty-designed rubric[,]” which may be applied to “a random student sample”).

200. While Professors Shaw & VanZandt appear to view course rubrics as different from rubrics used for law school assessment, *supra* note 4, at 118–19 and 141–46, Professor Curcio posits that common rubrics used for law school assessment could be adapted from a faculty member’s existing rubric, *supra* note 32, at 501.

201. STEVENS & LEVI, *supra* note 106, at 68–69, 177–78; BANTA & PALOMBA, *supra* note 12, at 100; Curcio, *supra* note 32, at 498.

202. SHAW & VANZANDT, *supra* note 4, at 142. The group may work within a larger assessment committee, or they may be a designated working group that reports to an assessment committee. For example, at Georgia State University College of Law (GSU COL), a team of faculty who taught the relevant skills designed each common rubric, and then the entire assessment committee vetted those rubrics. Curcio, *supra* note 32, at 498 (noting this sometimes resulted in redrafting). That said, there are a variety of ways to structure faculty involvement in the creation of an assessment plan, including in particular the measurement (implementation) stage. SHAW & VANZANDT, *supra* note 4, at 40–45, 126–29.

203. SHAW & VANZANDT, *supra* note 4, at 142.

from using the rubric are reliable.²⁰⁴ Using UK Law's appellate brief rewrite rubric as an example of a rubric that could be adapted to serve as a common rubric, the adaptation process would likely involve compressing the rubric by removing the rubric categories that address specific parts of a legal document that may not be taught in other courses with relevant assessment sources (that is, if the assessment sources are not appellate briefs but instead include other types of legal documents), and considering whether any other categories should be omitted or added in light of the particular law school learning outcome at issue. In addition, the narratives for the categories that remain (namely, organization, content of legal analysis, use of persuasive writing techniques where applicable, citation, and other aspects of mechanics) must include language that all involved in the adaptation process can understand and agree upon. This matters both for rubric design (validity and fairness) because the measurement language must be consistent with what is being taught, and rubric use because the evaluators must understand the narrative language to consistently apply it (reliability). Finally, the designers will need to consider whether the existing rubric progress levels are clear enough, or whether proficient should become competent given Standard 315's focus on competence.²⁰⁵

Once again, the appellate brief rewrite rubric is offered as just one example, as rubrics "allow for nuanced assessment . . . over a wide range of courses as well as a wide range of outcomes," and thus, existing rubrics could also be used to measure other mandated law school learning outcomes, including both knowledge and value outcomes.²⁰⁶ For example, Professor Curcio's recent article provides examples of common rubrics she and her faculty designed to measure law school learning outcomes relating to "legal knowledge and analysis" and "effective and professional engagement," among others.²⁰⁷ Existing

204. Curcio, *supra* note 32, at 509 (explaining that involving "faculty members who teach and assess the outcome the rubric assesses" is important so that the rubric "dimensions and descriptors," which are comparable to this article's use of categories and narratives, "capture students' achievement of that outcome"); Hamm, *supra* note 2, at 375 (stating that faculty should be given a chance to offer feedback if a smaller group creates a draft); *see also supra* notes 128 and 135.

205. ABA STANDARDS, *supra* note 24, at 24; *see also Hamm, supra* note 2, 380–82 (explaining that earlier versions of the standards used proficiency rather than competency, and noting that practicing attorneys could be helpful in describing competence as contemplated in Standard 315).

206. *See Curcio, supra* note 32, at 498.

207. *See Curcio, supra* note 32, at 498. The article describes the approach taken at GSU COL, where faculty designed eight new rubrics, corresponding to the law school's eight institutional learning outcomes, for purposes of law school assessment. *See Curcio,*

rubrics could likewise serve as the starting point for such design.²⁰⁸ And an article published in 2013 suggested that “uniform rubrics can be employed in courses across the curriculum so that the process of providing feedback to students can also be used to collect valuable information about the learning process.”²⁰⁹ It is important to acknowledge that not just any grading “rubric” used by a casebook faculty could serve as the foundation for a common rubric contemplated here. As this Article clarifies above in Part IV, the focus here is on analytic rubrics, which are criterion-referenced, and not tools that faculty may use for norm-referenced assessment.²¹⁰ Given the need for a criterion-referenced tool, the most likely existing resources may be rubrics used for formative assessment, such as the one Professor Duhart uses for a required practice essay in her Constitutional Law class.²¹¹

Second, anonymous rubric data from individual student or course assessment can be collected and reviewed by faculty when implementing a law school assessment plan. For example, the completed appellate brief rewrite rubrics described above could be

supra note 32, at 498. (describing approach as “backward design” and relying on rubrics from the Association of American Colleges and Universities and medical educators). In addition, The Holloran Center, which is associated with St. Thomas School of Law, has developed rubrics for law school assessment of learning outcomes involving professionalism, cultural competency, self-directedness, and teamwork/collaboration. Holloran Center, *Holloran Competency Milestones*, www.stthomas.edu/hollorancenter/resourcesforlegaleducators (last visited May 11, 2019).

208. For example, perhaps a professor who teaches Professional Responsibility has developed a rubric for grading exams that could also serve as the basis of a common rubric used to measure achievement of learning outcomes relating to professionalism.

209. Jones, *supra* note 8, at 101 (noting that “a cost-effective system could at least partly embed collection of information into existing systems”); *see also* Niedwicki, *supra* note 8, at 263–64, 267 (describing the use of a common rubric for assessing a professional skills program (programmatic assessment) like writing and trial practice, and noting that rubrics can also be an effective tool for institutional assessment).

210. BARBARA WALVOORD, *ASSESSMENT CLEAR AND SIMPLE: A PRACTICAL GUIDE FOR INSTITUTIONS, DEPARTMENTS, AND GENERAL EDUCATION* (2d ed. 2010).

211. Duhart, *supra* note 44, at 513–14 and Appendix E; *see also* related discussion in Part IV. Moreover, given that “effective writing instruction means teaching students how to perform rigorous analysis[,]” some aspects of the appellate brief rubric that get at the substance of a student’s legal analysis could even be useful if faculty are drafting narratives for a common rubric that is assessing the “legal analysis and reasoning” learning outcome in assessment sources (outputs) other than from legal writing courses such as essay exams. Beazley, *supra* note 129, at 43. *See also* Beazley, *supra* note 129, at 43 (explaining that “there is increasing recognition that a Legal Writing course is a particularly good place for students to learn the process of analytical thought at the heart of ‘thinking like a lawyer’”). Again, a law school’s curriculum map would be a useful place to pinpoint courses with relevant outputs. *See supra* note 73.

collected, the student names omitted, and then the anonymous rubric data aggregated across sections of the LRW Course. This data would identify how many students achieved at least proficiency in each of the rubric categories that are tied to the relevant law school learning outcomes required by Standard 302. Indeed, Interpretation 315-1 of the Assessment Standards expressly states that while assessment methods are likely to differ among law schools, possible methods “to measure the degree to which students have attained competency in the school’s student learning outcomes include review of the records the law school maintains to measure individual student achievement pursuant to Standard 314.”²¹² This is the second of two approaches for aggregating student work for law school assessment that Dean Susan Duncan offers; specifically, she explains that “individual professors ‘piggyback’ on the grading process and submit summaries of their students’ strengths and weaknesses or rubric scores[,]” which “are collected from multiple classes.”²¹³ The multiple classes could include both 1L and upper level courses, and need not be limited to writing courses.²¹⁴ The advantage of this approach is that faculty avoid having to allocate time for additional reading or “scoring” of the assignments that were first part of course assessment that has already been aggregated by rubric category (tied to a learning outcome) and performance level. In a time where resources are already spread thin, this approach could save time

212. ABA STANDARDS, *supra* note 24, at 24 (referencing other methods, including “student evaluation of the sufficiency of their education; student performance in capstone courses or other courses that appropriately assess a variety of skills and knowledge; bar exam passage rates; placement rates; [and] surveys of attorneys, judges, and alumni”).

213. Duncan, *supra* note 59, at 483 (citing WALVOORD, *supra* note 146, at 20–21); FUNK, *supra* note 60, at 64 n.3 (“In many instances, if done properly, course assessment may support program and institutional assessment.”); *see also* Banta & Palomba, *supra* note 12, at 103–05 (discussing use of faculty grading to provide program-level information without requiring a second scoring of artifacts); Andrea Susnir Funk & Kelley M. Maureman, *Starting From the Top: Using a Capstone Course to Begin Program Assessment in Legal Education*, 37 Okla. City U. L. Rev. 477, 492–93, 497–98 (2012) (discussing legal writing program assessment where professor grades first and then later collects sampling for assessment where identifying information is removed).

214. Curcio, *supra* note 32, at 501–02 n.51 (explaining decision to assess both 1L and upper level students). Again, rubrics (and resulting data) are criterion-referenced. If that information is not available because the professor uses norm-referenced assessment, then the faculty could still follow Professor Duncan’s idea of having professors in relevant courses provide a summary of the students’ strengths and weaknesses, which would be focused on whether the student outputs (likely exams) demonstrated competency in criteria tied to one or more law school learning outcomes. This may prove particularly useful for knowledge learning outcomes, because casebook faculty are less likely to use rubrics or otherwise engage in criterion-referenced assessment when grading final exams. *See supra* note 49 (discussing summative and norm-referenced assessment).

and yet still provide meaningful law school assessment data, because the underlying individual student assessment method—a rubric—would already be tested for validity, reliability, and fairness.²¹⁵

In short, an important lesson learned by the UK Law rubric project discussed in this Article is that law schools should explore where an existing embedded assessment measure for individual student assessment could also respond to the law school assessment mandate, especially where the student learning outcome(s) measured at the course level overlap with the law school learning outcomes to be measured. The rubric may look different than the one described in this Article—it may be used for a different law school course and thus measure entirely different law school outcomes. And the existing rubric, wherever it comes from, will likely need adaptation. But the key is that law schools should explore where existing resources and faculty expertise can be used as the starting point when the entire faculty gets to work responding to the ABA Assessment Standards.

VI. CONCLUSION

Outcomes assessment is a fundamental change in legal education because it refocuses the assessment inquiry on whether law students are actually learning the knowledge, skills, and values necessary for those entering the legal profession. The endeavor has benefits for students and law schools alike, but it takes time and resources. Thus, busy law schools need to implement the Assessment Standards in a meaningful and efficient way. Using a rubric project from UK Law's LRW Course as the primary example, this Article sought to show how law schools can take advantage of what some law faculty are already doing with rubrics, even when designed for a different reason, when responding to the ABA's Assessment Standards. Evaluating what knowledge and resources already exist at a law school can save time and encourage greater buy in when the full faculty takes on the ABA's assessment mandate, which is important when so many in legal education are already working with a very full plate. While there is no blueprint for assessment that can be applied across all law schools, the hope is that the ideas shared here add to the growing dialogue about how law schools can successfully respond to the ABA's assessment mandate.

215. See BANTA & PALOMBA, *supra* note 12, at 104–05 (discussing in the context of general education assessment and noting technological advances make collection and aggregation of information in this way easier than ever).

“IT’S NOT FOR A GRADE”: THE REWARDS AND RISKS OF
LOW-RISK ASSESSMENT IN THE HIGH-STAKES
LAW SCHOOL CLASSROOM

OLYMPIA DUHART*

I. INTRODUCTION

Even before they walk into their first classroom, law students are convinced that law school is an ultra-competitive game. And in many significant ways—class ranking, grading curves, teaching methods—the competitive nature of law school is reinforced and confirmed. Today, the escalating cost of legal education¹ and shrinking job opportunities nationwide² have only fueled the notion of law school as a zero-sum game with very high stakes. Law schools are even ranked based on student competitiveness.³ After all, law school has never been an endeavor for the faint of heart.⁴

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¹ See Debra Cassens Weiss, *Legal Education Cost Is Even Higher Than First Estimated, Transparency Group Says*, A.B.A. J. (May 7, 2012, 2:37 PM), http://www.abajournal.com/news/article/legal_education_cost_is_even_higher_than_first_estimated_transparency_group/; see also Jackie Gardina & Ngai Pindell, *What Is the Progressive Response to Law School Costs?*, SALT LAW BLOG (May 11, 2013), <http://www.blog.saltlaw.org/progressive-response-to-rising-costs-of-legal-education/>.

² Dimitra Kessenides, *Jobs Are Still Scarce for Law School Grads*, BLOOMBERG BUSINESSWEEK (June 20, 2014), <http://www.bloomberg.com/bw/articles/2014-06-20/the-employment-rate-falls-again-for-recent-law-school-graduates>.

³ Staci Zaretsky, *Which Law School Has the Most Competitive Students?*, ABOVE L. (Oct. 10, 2013, 1:25 PM), <http://abovethelaw.com/2013/10/which-law-school-has-the-most-competitive-students-and-which-law-school-offers-the-best-quality-of-life/>.

⁴ Indeed, popular culture has long traded on the extremely competitive nature of law school. See, e.g., SCOTT TUROW, *ONE L: THE TURBULENT TRUE STORY OF A FIRST YEAR AT HARVARD LAW SCHOOL* (1977) (The author offers his now-classic memoir about his

But the high-stakes law school culture collides in many ways with effective teaching methods. The law school culture is especially at odds with assessment tools that should be designed to maximize opportunities for feedback and learning, particularly those opportunities with little risk for failure or penalty. Feedback is most effective as formative assessment when it is “conducted during learning to promote, not merely judge or grade, student success.”⁵ Formative assessments, which are generally focused on improvement,⁶ should occur frequently in law school settings. The more practice the students have, the better off they will be. However, allowing students to participate in multiple assessment opportunities will come at a high price if each assessment is bound up with great exposure to failure. Often, students are so focused on the grade that they are not able to approach the experience as an opportunity to learn. And who can blame them? Who would ever want to learn to play a new instrument if every turn at the piano were in front of a packed audience at Carnegie Hall?

As law schools move to implement changes to standards that call for formative assessment,⁷ educators must consider the efficacy of various formative assessment models. The wider impact on the adoption of the formative assessment models should also inform the curriculum and course design. Instructors should consider whether the assessment tools would exacerbate the problem of the high-stakes, high-pressure law school environment. In one recent study, for example, about forty percent of law school students were clinically depressed by gradu-

law school experience.) See also *THE PAPER CHASE* (20th Century Fox 1973). The film about the struggles of a first-year student has been revived through memes memorializing the trials of law school. Most recently, network television has promoted the hypercompetitive nature of law school through shows such as *How to Get Away with Murder*, where students would literally kill to be at the top of the class. See *How to Get Away with Murder* (ABC television broadcast Sept. 2014).

⁵ Rick Stiggins, *From Formative Assessment to Assessment FOR Learning: A Path to Success in Standards-Based Schools*, PHI DELTA KAPPAN, Dec. 2, 2005, at 324, 326.

⁶ Roberto L. Corrada, *Formative Assessment in Doctrinal Classes: Rethinking Grade Appeals*, 63 J. LEGAL EDUC. 317, 319 n.5 (2013).

⁷ The American Bar Association recently adopted new standards that call for formative assessment. See *Transition to and Implementation of the New Standards and Rules of Procedure for Approval of Law Schools*, A.B.A. 2 (Aug. 13, 2014), http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/governancedocuments/2014_august_transition_and_implementation_of_new_aba_standards_and_rules.authcheckdam.pdf [hereinafter *Transition to New Standards*]. See *infra* Part II.B and accompanying notes.

ation.⁸ Moreover, law professors wading into the new world of formative assessments⁹ should be mindful not to import the overemphasis on grades from the familiar world of summative assessment or final exams. Instead, professors should more expansively incorporate low-risk formative assessment in the law school classroom. The term “low-risk formative assessment” refers to assessment that does not run the risk of having a high impact on a student’s public performance or grades. They are low-stakes assignments that carry no or very low grade impact. Most importantly, these low-risk assessments focus on feedback over scores and performance. The goal is to provide students an opportunity to practice—and even “fail”¹⁰—with very little risk. The possibilities for these assessments are almost limitless; they could include in-class practice quizzes that are collected or self-graded, group assignments, games, mock debates, or out-of-class projects crafted by students.¹¹

Critics argue that multiple low-stakes practice opportunities are stripped of their validity when they do not have a significant impact on grades. However, there is new thinking about low-risk assessment that suggests that low-risk, ungraded assessments offer multiple benefits to

⁸ Debra Cassens Weiss, *You Are Not Alone: Law Prof Who Considered Suicide Tells His Story*, A.B.A. J. (Apr. 8, 2014, 10:50 AM), http://www.abajournal.com/news/article/you_are_not_alone_law_prof_who_considered_suicide_tells_his_story. In the same study, the students were no more depressed than the general population prior to law school, where about eight percent report depression. *Id.*

The reasons for law student depression are well documented. Marjorie Silver, a professor at Touro Law Center in Central Islip, N.Y., who speaks to students about her own struggle with depression, notes several contributing factors. First, law students come into the profession expecting success—and then [ninety] percent are disappointed when they don’t rank in the top [ten] percent. Further, Silver says, students are thrust into an unfamiliar learning environment in which the predominant Socratic teaching method undermines self-esteem.

Hollee Schwartz Temple, *Speaking Up: Helping Law Students Break Through the Silence of Depression*, ABA J. (Feb. 1, 2012, 8:50 AM), http://www.abajournal.com/magazine/article/speaking_up_helping_law_students_break_through_the_silence_of_depression/.

⁹ The distinctions between formative and summative assessments will be addressed in greater detail below. See *infra* Part II.A and accompanying notes.

¹⁰ “Formative work is low stakes when taking a risk to learn something new. Failure at first is expected, but equally expected is a rise from it to find success. If an athlete doesn’t do the work to improve. . . they are not going to perform when it is game time.” Kathy Dyer, *Accurately Defining Formative Assessment*, NORTHWEST EVALUATION ASS’N (Oct. 30, 2013), <https://www.nwea.org/blog/2013/accurately-defining-formative-assessment/>.

¹¹ Examples of low-risk formative assessment assignments are provided in Appendices A through F.

law students and professors. First, low-risk assessments can help minimize performance-inhibiting anxieties in law students.¹² Eventually, these performance anxieties can become significant obstacles to learning and development.¹³ Although grades have been called the “pedagogical whip”¹⁴ in teaching, frequent opportunities to practice that do not have any or much impact on grades can also be valuable. They can alleviate student anxiety and help prepare students for a more effective practice performance.¹⁵ Low-risk assessments can also allow instructors to collect a more accurate reflection of what their students know and do not know. These stronger snapshots of student understanding are an essential component for professors who need to make appropriate teaching adjustments. The low-risk formative assessments also put the focus properly on learning and understanding. These types of assessments can optimize student performance and strengthen the feedback loop. All of these practices support greater student success rates.

Through creativity, freedom from the norms of law school assessment, and explicit communication with students about methodology, law professors can develop effective, ungraded, low-risk assessment tools. Despite the persistency of the high-stakes law school culture, law schools should strive to incorporate low-risk formative assessment tools that are valid measures of student understanding and teaching effectiveness. Such low-risk assessments are only fair and valid, however, if they mirror the final exam. For example, low-risk formative assessments that are presented as non-threatening, practice multiple-choice questions would be unfair if the final exam consisted solely of essay questions. Changes in the formative assessment culture, therefore, might also lead to changes in the summative assessment tools.

This article will explore the rewards and limitations of promoting low-risk formative assessments in the law school classroom. After the introduction, Part II makes distinctions between formative and summative assessment; in addition, it highlights the new changes in the regulatory standards that call for increased formative assessment methods. Part III examines the ways in which the most commonly used assess-

¹² Barbara F. Cherem, *Using Online Formative Assessments for Improved Learning*, CURRENTS IN TEACHING & LEARNING, Spring 2011, at 42, 45–46.

¹³ *Id.* at 45.

¹⁴ Scott Warnock, *Frequent, Low-Stakes Grading: Assessments for Communication, Confidence*, FAC. FOCUS (Apr. 18, 2013), <http://www.facultyfocus.com/articles/educational-assessment/frequent-low-stakes-grading-assessment-for-communication-confidence/>.

¹⁵ *Id.*

ment models— particularly, overreliance on high-stakes finals at the end of the course—exacerbate the problems associated with the high-pressure law school culture. It addresses the ways overemphasis on summative assessment both frustrates the feedback loop and adversely impacts student well-being. Part IV raises common criticisms of the low-risk formative assessment models and responds with ways that minimize the potentially negative impact. Part V critiques the overuse of traditional teaching and assessment practices in law school. In Part VI, this article provides some guidelines needed to create a classroom culture that supports low-risk formative assessment tools. This part promotes self-reflective and collaborate learning experiences that are efficient for law professors. It also addresses strategies that can be used to minimize the burdens on faculty members who want to expand the variety of low-risk formative assessment in their classes. These strategies range from completion points to grading rubrics to collaborative exercises. The Appendix contains samples of low-risk formative assessments that can be used in various first- and upper-year courses.

II. ONCE IS NEVER ENOUGH

Imagine being told in January that you will be performing in a summer music concert in front of a huge crowd. The first thing you are likely to do is establish a rigorous practice schedule that will ensure that you are ready for your big day. Very few people—even the most accomplished musicians—would wait until the start of the concert to play the featured song for the very first time. Even thinking very hard about the concert or listening to recordings of other artists will not prepare you well for your own performance. To figure out where you need work, you would have to sit down and play the song yourself. And you would probably have to practice several times to get it right. Once would never be enough.¹⁶

But overreliance on a single, huge, graded summative assessment at the end of a course is just like waiting until the day of the concert to try to that new song. It is very stressful, does not offer any opportunity for improvement, and carries the risk of great failure. So why do so

¹⁶ Malcolm Gladwell stresses this point as he writes about the “ten-thousand-hour-rule.” Malcolm Gladwell, *Complexity and the Ten-Thousand-Hour Rule*, NEW YORKER (Aug. 21, 2013), <http://www.newyorker.com/news/sporting-scene/complexity-and-the-ten-thousand-hour-rule>. Gladwell argues that, in complex fields, it takes *a lot* of practice; one estimate is that it takes at least 10,000 hours of practice to become an expert at something. *Id.* “In cognitively demanding fields, there are no naturals.” *Id.*; see also MALCOLM GLADWELL, *OUTLIERS: THE STORY OF SUCCESS* (2011).

many law school classrooms still rely on the big end-of-the-semester final? Quite simply, it is the way things have always been done. And as most law school faculty do not have formal training in education, we replicate our own law school experiences—for better or worse. It is also deemed by many to be a “necessary evil” because it is perceived to be less time consuming for law school faculty who sometimes have more than 150 students a semester.

The term “apprenticeship of observation”¹⁷ refers to the reality that each law professor “approaches [his or her] teaching responsibilities having spent thousands of hours as students over the course of [his or her] lifetime.”¹⁸ The experience serves as a de facto “apprenticeship” that restricts the instructor’s ability to situate his or her own students within a pedagogically-oriented scheme.¹⁹ Since the nineteenth century, American law schools have relied on the high-stakes final exam as the only assessment most students experience in a doctrinal course.²⁰ The Langdellian tradition²¹ of case method and high-stakes final has been the norm of most law professors. Being overwhelmingly practiced in one model of law school classroom instruction, professors are slow to move out of their comfort zones into new models of teaching and learning.²² Their apprenticeship of observation has, for the most part, cemented a commitment to a single three- or four-hour exam at the end of the course.

A. *Summative Assessment Versus Formative Assessment*

Since many instructors are doing things the way they have always done them, it is no surprise that there is an overreliance on summative assessment in today’s law school classroom. Summative assessment refers to assessments that assign grades or “otherwise indicate the extent to which students have achieved the course goals.”²³

¹⁷ David M. Moss, *Legal Education at the Crossroads*, in REFORMING LEGAL EDUCATION: LAW SCHOOLS AT THE CROSSROADS 1, 4 (David M. Moss & Debra Moss Curtis eds., 2012) (citing DAN C. LORTIE, *SCHOOLTEACHER: A SOCIOLOGICAL STUDY* (1975)).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Rogelio A. Lasso, *Is Our Students Learning? Using Assessments to Measure and Improve Law School Learning and Performance*, 15 BARRY L. REV. 73, 79 (2010).

²¹ See *id.* at 80 (discussing the introduction of the end-of-the-term exams around 1870 at Harvard Law School to compliment Dean Christopher Columbus Langdell’s new case method of instruction); see also Steven I. Friedland, *Outcomes and the Ownership Conception of Law School Courses*, 38 WM. MITCHELL L. REV. 947, 949 (2012).

²² Moss, *supra* note 17, at 4.

²³ Lasso, *supra* note 20, at 77.

Summative assessment focuses on evaluation.²⁴ Professor Roberto Corrada calls summative assessment a “snapshot” intended only to determine what someone has learned up to a certain point.²⁵ It literally “sums up” what students have learned.²⁶ While all summative assessment measures student learning, some summative assessment also arguably offers feedback.²⁷ Indeed, the terms “formative” and “summative” apply not to the actual assessments but rather the functions they serve.²⁸ The feedback for summative assessment can offer students the chance to develop their learning skills.²⁹ Unfortunately, the feedback for summative assessment usually provides only a minimal chance for immediate improvement because the grade has already been assigned, and in many cases, the course is over.³⁰ And the reality is that most students rarely go back to examine old exams in an effort to learn from them.

Rather than an “event” to be experienced at the end of a course or unit, the best assessment has properly been described as a “continuing cyclical process.”³¹

At the student level, the most common goal is to measure how much of a subject the student learned over the course of the semester. Traditionally, this has been done through a final exam, or what is known as summative assessment, where it is the sum of the learning that is assessed. As law school curricula move toward more skills courses and experiential

²⁴ MICHAEL HUNTER SCHWARTZ ET AL., *TEACHING LAW BY DESIGN* 154 (2009).

²⁵ Corrada, *supra* note 6, at 319 n.5.

²⁶ Ruth Mitchell, *A Guide to Standardized Testing: The Nature of Assessment*, CENTER FOR PUB. EDUC. (Feb. 15, 2006), <http://www.centerforpubliceducation.org/Main-Menu/Evaluating-performance/A-guide-to-standardized-testing-The-nature-of-assessment>.

²⁷ David Thomson, *When the ABA Comes Calling, Let's Speak the Same Language of Assessment*, 23 PERS.: TEACHING LEGAL RES. & WRITING 68, 69 (2014), available at <http://info.legalsolutions.thomsonreuters.com/pdf/perspec/2014-fall/2014-fall-9.pdf>.

²⁸ Paul Black & Dylan Wiliam, “*In Praise of Educational Research*”: *Formative Assessment*, 29 BRIT. EDUC. RES. J. 623, 623 (2003).

²⁹ Lasso, *supra* note 20, at 78.

³⁰ Though there is clearly a high value in advancing students’ understanding of their learning strengths and weaknesses, summative assessments that come in the form of all-or-nothing final exams are often not reviewed for meaningful feedback by students or they come too late to impact student grades. In my own experience, only a handful of students ever come back to review their final exams. Even summative assessments that test knowledge as a midterm usually are only subject to minimal opportunity to improve performance. Some professors do not re-test on material already covered in the midterm, and very few would ever invite a challenge to a midterm grade. One notable exception is Professor Corrada, who encourages midterm exam appeals as a method of encouraging his students to learn formatively from his exams. See Corrada, *supra* note 6, at 319, 321.

³¹ Thomson, *supra* note 27, at 69.

learning, the preferred method of assessment is formative in nature—that is, the assessment helps to form the student’s learning and to help them improve over the course of the semester.³²

In contrast to summative assessment that is aimed at measuring student grades or measuring the “extent to which students have achieved the course goals,”³³ formative assessment is intended to offer feedback to both students and faculty.³⁴ The central purpose of formative assessment is learning.³⁵ A hallmark of formative assessment is prompt communication to students about learning so students can improve.³⁶ As one commentator has noted: “It helps to form learning.”³⁷ In addition to helping students understand their learning strengths and deficiencies, formative assessment can also help professors learn what is working and not working about their teaching. Nevertheless, the single summative assessment remains the dominant assessment tool because it is easier to implement, professors experienced that model of assessment themselves, and tradition is hard to buck.

B. *Change on the Horizon*

However, professors will soon be forced to do things differently. The American Bar Association (ABA), the accreditation body for American law schools, has just approved revisions to the standard that explicitly calls for formative and summative assessment methods.³⁸ Among the numerous changes that have been approved over the past cycle are standards impacting assessment of student learning. The new standards explicitly state that law schools will need to feature both summative and formative assessments in their curricula. These changes, slated to go into effect in the fall of 2016, are as follows:

³² *Id.* at 71.

³³ Lasso, *supra* note 20, at 77.

³⁴ *Id.*

³⁵ *Id.*

³⁶ Memorandum from Richard K. Neumann, Jr., Professor of Law, Maurice A. Deane Sch. of Law at Hofstra Univ., to Council of the ABA Section of Legal Educ. & Admissions to the Bar (Jan. 31, 2014), available at <http://www.alwd.org/wp-content/uploads/2014/02/Chapter-3-Neumann.pdf>. Professor Neumann has weighed in against the adoption of Standard 314; he has stressed that formative assessment must be detailed and individualized to be meaningful. *Id.*

³⁷ *Id.*

³⁸ See *Transition to New Standards*, *supra* note 7.

Standard 314. ASSESSMENT OF STUDENT LEARNING

A law school shall utilize both formative and summative assessment methods in its curriculum to measure and improve student learning and provide meaningful feedback to students.

Interpretation 314-1

Formative assessment methods are measurements at different points during a particular course or at different points over the span of a student's education that provide meaningful feedback to improve student learning. Summative assessment methods are measurements at the culmination of a particular course or at the culmination of any part of a student's legal education that measure the degree of student learning.

Interpretation 314-2

A law school need not apply multiple assessment methods in any particular course. Assessment methods are likely to be different from school to school. Law schools are not required by Standard 314 to use any particular assessment method.³⁹

Standard 315. EVALUATION OF PROGRAM OF LEGAL EDUCATION, LEARNING OUTCOMES, AND ASSESSMENT METHODS

The dean and the faculty of a law school shall conduct ongoing evaluation of the law school's program of legal education, learning outcomes, and assessment methods; and shall use the results of this evaluation to determine the degree of student attainment of competency in the learning outcomes and to make appropriate changes to improve the curriculum.

Interpretation 315-1

Examples of methods that may be used to measure the degree to which students have attained competency in the school's student learning outcomes include review of the records the law school maintains to measure individual student achievement pursuant to Standard 314; evaluation of student learning portfolios; student evaluation of the sufficiency of their education; student performance in capstone courses or other courses that appropriately assess a variety of skills and knowledge; bar exam passage rates; placement rates; surveys of attorneys, judges, and alumni; and assessment of student performance by judges, attorneys, or law professors from other schools. The methods used to measure the degree of student achievement of learning outcomes are likely to differ from school to school and law schools are not required by this standard to use any particular methods.⁴⁰

³⁹ ABA REV. STAND. FOR APPROV. L. SCH. § 314, available at http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/201406_revised_standards_clean_copy.authcheckdam.pdf (emphasis in original).

⁴⁰ *Id.* § 315 (emphasis in original).

Taken together, the revised standards on assessment make clear that law schools must more robustly incorporate both formative and summative assessment models (as the old standards did not mention formative assessments at all). Further, the language in the Interpretation of Standard 315 regarding various methods available to determine competency in learning outcomes demonstrates an appetite for assessments beyond the “do-or-die” final exams.⁴¹

However, the ABA standards do not clearly address all of the questions law professors have about the new assessment requirement. For instance, there is already discussion about what the standards actually mean for law schools.⁴² It is not yet settled what law schools must do to be in compliance with the new standards.⁴³ Specifically, it is not clear whether the ABA is promoting assessments at the school, program, course level, or all three.⁴⁴

At the very least, however, the adoption of the revisions reflects a movement toward more valid assessment models that better promote learning and teaching. Assessments should no longer be simply equated with a final exam or even a high-stakes midterm exam, for that matter.⁴⁵ Without a thoughtful consideration and understanding of the value of formative assessment, the danger is that law professors will merely take their high-stakes grading culture of the final exam and break it in half with a midterm and final exam to satisfy the “formative” assessment standard. Such a step would undermine the importance of formative assessment and exacerbate the stressful law school culture.

III. PRACTICE MAKES PERFECT

“No research supports the idea of determining grades based solely on one exam given at the end of a semester.”⁴⁶ Yet law schools persist in taking the “wait until the day of the concert” approach to assessment. This section of the article asserts that the overreliance on the most common assessment model—the dreaded tortures of the damned known as “finals”—contributes significantly to the problems associated with the high-stakes law school culture. Not only does overreliance on this model frustrate the feedback loop that is paramount in

⁴¹ Lasso, *supra* note 20, at 79.

⁴² Thomson, *supra* note 27, at 69.

⁴³ *Id.*

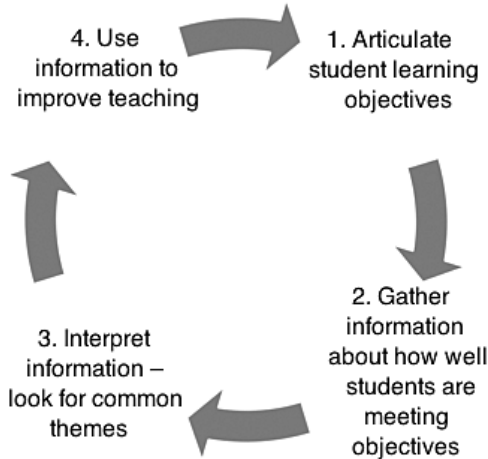
⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ SCHWARTZ ET AL., *supra* note 24, at 155.

effective assessment, but it also has a negative impact on student well-being.

First, the single summative assessment model challenges everything known about learning and valid assessment tools. The assessment cycle is illustrated in the loop below:⁴⁷



The cycle reproduced above suggests that the assessment process relies on constant evaluation of (1) ways to improve student learning and (2) ways to improve teaching.⁴⁸ The law school assessment is hyper-focused on a third function of assessment: evaluating students to assign grades (in both summative and formative assessments). The current model defeats the feedback loop. “The feedback students receive is limited and often far removed from the ending of the course.”⁴⁹ By offering only limited feedback opportunities at the end—and usually to those in dire straits or those who handily earned the top grade—the high-stakes, graded final exam restricts professors’ ability to gather information in a meaningful time to improve instruction for the class in front of them.

In addition, the emphasis on high-risk graded assessments makes an already difficult emotional journey in law school⁵⁰ more difficult for

⁴⁷ *Id.* at 136.

⁴⁸ *Id.* at 136–37.

⁴⁹ Linda S. Anderson, *Incorporating Adult Learning Theory into Law School Classrooms: Small Steps Leading to Large Results*, 5 *APPALACHIAN J.L.* 127, 135 (2006).

⁵⁰ “To begin with, it is well recognized that law school is among the most stressful of all educational environments, including medical school.” James B. Levy, *As a Last Re-*

students. Some reports indicate that test anxiety seriously affects about twenty percent of the school-going population.⁵¹ An additional eighteen percent may be moderately affected by test anxiety.⁵² By graduation, about forty percent of law students are suffering from clinical depression, one recent study reported.⁵³

Even for those students not suffering from acute test anxiety, there is a relationship between high-stakes testing and student mental health.⁵⁴ For even young children, stress about high-stakes tests manifests itself in physical and psychological ways.⁵⁵ One Florida pediatrician reported that there is an uptick in patients during standardized testing season, with patients reporting “some level of test-related anxiety, with symptoms ranging from stomach aches [sic] to panic attacks.”⁵⁶ In a 2009 study of Michigan students, eleven percent of students surveyed reported severe psychological and physiological responses to testing.⁵⁷ When there are already underlying mental health issues, the consequences can be even more serious for students.⁵⁸ One study, for example, traced the relationship between a

sort, *Ask the Students: What They Say Makes Someone an Effective Law Teacher*, 58 ME. L. REV. 49, 61 (2006). The high emotional toll of law school has been long documented. See B.A. Glesner, *Fear and Loathing in Law School*, 23 CONN. L. REV. 627, 627 (1991) (noting that students blame the legal education *process* for their stress levels); see also Lawrence S. Krieger, *Institutional Denial About the Dark Side of Law School, and Fresh Empirical Guidance for Constructively Breaking the Silence*, 52 J. LEGAL EDUC. 112, 113 (2002).

⁵¹ See Valerie Strauss, *Test Anxiety: Why It Is Increasing and [Three] Ways to Curb It*, WASH. POST (Feb. 10, 2013), <http://www.washingtonpost.com/blogs/answer-sheet/wp/2013/02/10/test-anxiety-why-it-is-increasing-and-3-ways-to-curb-it/>; see also Mark Chapell et al., *Test Anxiety and Academic Performance in Undergraduate and Graduate Students*, 97 J. EDUC. PSYCHOL. 268, 268 (2005) (“Test anxiety is . . . ‘the set of phenomenological, psychological, and behavioral responses that accompany concern about possible negative consequences or failure on an exam or similar evaluative situations.’”); see also Bethany L. Rosado, *The Effects of Deep Muscle Relaxation and Study Skills Training on Test Anxiety and Academic Performance* 6 (2013) (unpublished honors project, East Texas Baptist University), available at https://www.etbu.edu/files/5713/8608/9755/Bethany_Rosado_Honors_Project_2013.pdf.

⁵² Strauss, *supra* note 51.

⁵³ Weiss, *supra* note 8.

⁵⁴ Rhema Thompson, *Too Much Stress? Parents, Experts Discuss High-Stakes Standardized Test Anxiety*, WJCT NEWS (Apr. 23, 2014, 4:47 AM), <http://news.wjct.org/post/too-much-test-stress-parents-experts-discuss-high-stakes-standardized-test-anxiety>.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ See, e.g., Robin Nusslock et al., *A Goal-Striving Life Event and the Onset of Hypomanic and Depressive Episodes and Symptoms: Perspective from the Behavioral Approach System (BAS) Deregulation System*, 116 J. ABNORMAL PSYCHOL. 105, 105 (2007) (discussing the interplay

goal-striving life event and the onset of hypomanic and depressive episodes in college students.⁵⁹

Further, many students typically view testing situations as “personally threatening.”⁶⁰ Law school grades have a negative impact on students’ self-esteem.⁶¹ Test-related stress presents in two distinct areas: worry in anticipation of the test and anxiety following test completion.⁶² While testing and grading cannot be avoided, the negative impact of constant high-stakes grading can be minimized through formative assessment tools. Therefore, assessment designers need to be thoughtful in considering the impact that a testing assessment process will have on the emotional and mental well-being of their students. “On campuses, where discussions of mental health are often left to student affairs, defining psychosocial well-being means ascertaining the applicability of this concept within a larger discussion . . . in relationship to student learning.”⁶³

In addition, the relationship between testing and anxiety is a two-way street. High-stakes testing does not just negatively impact student well-being. The high emotional pressures of the testing can negatively

between goal-striving events, such as examinations, and manic episodes in bipolar individuals).

⁵⁹ *Id.* at 105–12. In an ongoing longitudinal investigation of bipolar spectrum disorders, researchers confirmed the relationship between preparing for and taking final exams and the onset of hypomanic symptoms among college students with bipolar spectrum disorders. *Id.* Hypomanic episodes were defined as “abnormally and persistently elevated, expansive, or irritable mood.” *Id.* at 109. The researchers did not record a relationship between final exams and DSM-IV major depressive episodes among bipolar spectrum participants. *Id.* at 112. Among the bipolar spectrum subjects who took final exams, forty-two percent had an “exam-specific hypomanic episode” compared to only four percent of those bipolar spectrum individuals who were not tested. *Id.* at 110.

⁶⁰ Rosado, *supra* note 51, at 6.

⁶¹ See Andrea Curcio, *Assessing Differently and Using Empirical Studies to See If It Makes a Difference: Can Law Schools Do It Better?* 27 QUINNIPIAC L. REV. 899, 901 (2009) (“[L]aw school grades also impact students’ sense of confidence and self-worth and often cause students to disengage.”); see generally Grant Morris, *Preparing Law Students for Disappointing Exam Results: Lessons from Casey at the Bat*, 45 SAN DIEGO L. REV. 441 (2008).

⁶² M. Gail Jones et al., *The Impact of High-Stakes Testing on Teachers and Student in North Carolina*, PHI DELTA KAPPAN, NOV. 1999, at 199, 201.

⁶³ Ashley Finley, *Connecting the Dots: A Methodological Approach for Assessing Students’ Civic Engagement and Psychological Well-Being*, ASS’N AM. CS. & US., <https://www.aacu.org/publications-research/periodicals/connecting-dots-methodological-approach-assessing-students%E2%80%99-civic> (last visited May 1, 2015) (connecting the relationship between psychological well-being and civic engagement or, more broadly, learning on the college campus).

impact student testing performance as well.⁶⁴ While emotion triggers our attention and alerts the brain to be prepared for something important, it also plays a key role in self-efficacy.⁶⁵ This, in turn, promotes a student's ability to succeed on a task at hand.⁶⁶ Conditions that lower student self-efficacy, such as an atmosphere with high-stakes assessment, can lead to negative neurobiological effects that "actually impede learning."⁶⁷

As research in cognitive science and psychology gives us a better understanding about the relationship between anxiety and performance,⁶⁸ it makes sense to develop less stressful assessment tools to assist in both student well-being and performance levels.

IV. IS THIS FOR A GRADE?

Anyone who has taught for even one day knows the subtext of a student receiving an assignment from the teacher and then raising his or her hand to ask the following question: "Is this for a grade?" Wrapped up in that simple prompt there are often value judgments about the importance of the assignment, how much effort the student will invest in the work, and what the teacher can expect as a final work product. No grade often translates to "I am not putting much effort into this." Such a decision essentially destroys the validity of the assessment and renders it ineffective.

While high-stakes formative assessment comes replete with problems, low-stakes formative assessment has its own set of obstacles. Although there are several legitimate critiques of low-risk formative assessments, the rewards of such assessment models outweigh the risks.

A. "They Won't Take It Seriously If It Doesn't Count"

As noted above, there is an inherent challenge in getting students to make the best use of many common low-risk formative assessment tools. On one hand, some students do not take ungraded assignments or self-assessments seriously (ditto for many efforts to bolster self-regu-

⁶⁴ See Levy, *supra* note 50, at 56 (addressing the relationship between the emotional climate of a classroom and academic success).

⁶⁵ *Id.* at 56, 58.

⁶⁶ *Id.* at 58.

⁶⁷ *Id.*

⁶⁸ Strauss, *supra* note 51.

lated learning strategies).⁶⁹ Often, if students do not feel there is much at risk, they do not do their best on formative assessments. In other words, students sometimes make a decision to focus only on the final exam or product worth the largest percentage of the final grade.⁷⁰ Student motivation is an integral part of teaching.⁷¹ Indeed, motivation intersects with active learning techniques to maximize student engagement.⁷² This is a product, rather than a sum; therefore, the absence of motivation makes the active learning efforts futile.⁷³ Student motivation for completion of formative assessment is just as important to the validity of such tools.⁷⁴

On the other hand, law professors must respond to the challenges of teaching students who are often paralyzed by the pressures of the competitive law school environment. Because of the competitive law school culture, formative assessments can be paralyzing and can trigger fear of failure for many students. Law students are afraid of “failing” a formative assessment and afraid of the implications of such failure.⁷⁵ That failure is compounded when so-called formative assessments conform to the summative, high-stakes graded demands that are more appealing for most law professors.

B. “*This Is Law School. I’m Not Teaching Babies.*”

Another common criticism that plagues low-risk formative assessment is that it infantilizes law students, who are adult learners in graduate school training to be attorneys. Some law professors, who properly see themselves as gatekeepers of the profession, have philosophical objections to giving students multiple “safe” places to practice.

⁶⁹ See John Misak, *Why I Started Grading First Drafts and Why I Stopped*, CHRON. VITAE (Mar. 10, 2015), <https://chroniclevitae.com/news/936-why-i-started-grading-first-drafts-and-why-i-stopped> (discussing a composition instructor’s experience hearing complaints from fellow faculty members that “no one takes an ungraded [assignment] seriously”); see also Ciara O’Farrell, *Enhancing Student Learning Through Assessment: A Toolkit Approach 9* (unpublished manuscript) (discussing techniques for overcoming the challenge of some students not taking formative assessment seriously), available at http://www.tcd.ie/teaching-learning/academic-development/assets/pdf/250309_assessment_toolkit.pdf.

⁷⁰ See O’Farrell, *supra* note 69, at 9 (“[S]tudents are generally most motivated by what is going to contribute to their final mark.”).

⁷¹ ELIZABETH F. BARKLEY, *STUDENT ENGAGEMENT TECHNIQUES* 4–7 (2010).

⁷² *Id.* at 4–5.

⁷³ *Id.* at 5–7.

⁷⁴ *Id.*

⁷⁵ Cherem, *supra* note 12, at 45.

The argument, in a nutshell, is that students should be self-sufficient enough as young adults headed for the bar exam to take a disciplined approach to their own studies. Further, some law professors see value in training students to think on their feet, respond well under pressure, and function in a high-stakes environment. All these skills, after all, will help make someone a strong advocate for a client one day.

But the focus on high-stakes, graded tests that force students into assessments that carry great risk ignores the realities of the mental strain that impacts law students. Furthermore, by using high-stakes, graded assessment as the dominant model, law school assessments are marked by a common defect: they fail to “emphasize the skills, knowledge and attitudes regarded as most important, not just those that are easy to assess.”⁷⁶ Other lawyering skills such as collaboration, interpersonal skills, and metacognition may not lend themselves easily to grades but are essential lawyering skills.⁷⁷ These skills should be developed and supported explicitly in the classroom. Low-risk formative assessment makes this possible.

C. “I Need Every Point I Can Get”

Another risk of low-risk formative assessment involves the relentlessly competitive nature of law students. Even when low-risk assessments count for a very small portion of the grade, or only involve participation points, students can become obsessed with their performance rather than their opportunities for feedback and growth. Because the bulk of law school delays grades until the very end, professors who offer some feedback early in the course must deal with the overemphasis that students assign to low-stakes or no-stakes assignments. Indeed, the student who is prone to anxiety or stress will even obsess over a small participation point. The law school culture is hard to change, even among students.

By being explicit about teaching methods and assessments from day one, the instructor should be able to minimize the student emphasis on grades and competition. Professors can also consider sharing

⁷⁶ Black & Wiliam, *supra* note 28, at 627.

⁷⁷ See Curcio, *supra* note 61, at 909–10 (citing Schultz and Zedeck’s twenty-six factors for effective lawyering as set forth in MARJORIE M. SHULTZ AND SHELDON ZEDECK, FINAL REPORT: IDENTIFICATION, DEVELOPMENT AND VALIDATION OF PREDICTORS FOR SUCCESSFUL LAWYERING (2008)); see also Anthony Niedwiecki, *Teaching for Lifelong Learning: Improving the Metacognitive Skills of Law Students Through More Effective Formative Assessment Techniques*, 40 CAP. U. L. REV. 149, 155–56 (2012).

short essays about the value of engaged learning and low-risk assessment. By being transparent⁷⁸ about all aspects of the course and being consistent in efforts to build a learning community, professors should be able to quell student concerns about the “value” of low-risk assessments.

V. “SOCRATES DIDN’T KNOW EVERYTHING”

Though still the preferred teaching method in most American law schools, the Socratic method has been widely denounced. “However employed, the Socratic method is often criticized. Ralph Nader has called it ‘the game only one can play,’ and there have been generations of students who . . . have wished curses on Dean Langdell.”⁷⁹

The Socratic method has been defended for its ability to help students learn how to “think quickly, respond under stress, and teach themselves; all essential to most types of law practice.”⁸⁰ The value of the Socratic method, coupled with the reinforcement from apprentice observation, make the teaching method hard to abandon. The corollary to the Socratic method, the high-stakes final exam, has been equally persistent. But there is space for multiple teaching and assessment methods. Further, as commentators have stressed, the single exam is “invalid, unreliable, and even ‘anti-educational.’”⁸¹

Formative assessments are designed to enhance student learning and performance by providing increased feedback.⁸² The most useful feedback identifies student mistakes and offers timely corrections.⁸³ But these objectives can be elusive within the bounds of the competing tensions of the high-stakes law school environment entrenched in the Socratic method and high-stakes finals.⁸⁴ A single final exam challenges the well-being of students and does not offer a timely opportu-

⁷⁸ In my classes, I tell the students on day one that we will do things differently. I also share with them the analogy of the music concert and practice schedule I have used throughout this article. The value of setting clear goals with regard to assessment is also outlined in detail in Chapter Seven of Roy Stuckey’s *Best Practices for Legal Education: A Vision and a Road Map*. ROY STUCKEY ET AL., *BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROADMAP* 235 (2007).

⁷⁹ TUROW, *supra* note 4, at 41.

⁸⁰ Anderson, *supra* note 49, at 135.

⁸¹ Steven Friedland, *A Critical Inquiry into the Traditional Uses of Law School Evaluation*, 23 PACE L. REV. 147, 177 (2002).

⁸² Carol Springer Sargent & Andrea A. Curcio, *Empirical Evidence That Formative Assessments Improve Final Exams*, 61 J. LEGAL EDUC. 379, 379 (2012).

⁸³ Niedwiecki, *supra* note 77, 155–56 (2012).

⁸⁴ *Id.* at 176–77.

nity to correct learning or teaching gaps. Yet professors are correctly concerned about the efficiency of offering varied low-risk assessments with a large volume of students. Some low-risk formative assessments—such as the review of practice questions in class—also exposes the law professor to the demands of transparency. Students are able to critique questions and answers, which does not usually happen on the final exam. For law professors, the threat of being challenged openly in class may be daunting. But the benefit is that the questioning from students can help the professor become a better exam-writer. It may also expose flaws in student understanding of material while there is still time to for adjustments.⁸⁵

There are burdens and benefits in creating low-risk formative assessment tools that help measure teaching effectiveness and improve self-regulated learning. Formative and summative work must be aligned within a complete system “so that teachers’ formative work [is] not undermined by summative pressures” within the system.⁸⁶ The goals of each assessment tool should remain separate and distinct; nevertheless, the formative assessment should create a proper training ground for the demands of the summative assessment.

One of the appeals of low-risk formative assessment is its ability to contribute positively to the learning culture in the classroom. Instead of leveraging fear as a motivator for students who are afraid to fall on their faces in front of the classroom during a Socratic grill, some of the more accessible low-risk assessment models build an atmosphere of a learning community.⁸⁷ The models with low- or no-risk assessments support a less threatening environment where students are “more willing to test their understanding in public.”⁸⁸ In fact, research suggests that formative assessment contributes positively to both student motivation and student achievement.⁸⁹ By collaborating with researchers at Washington University in St. Louis, for example, a group of middle school teachers successfully incorporated “retrieval practice” into their science and social studies classes.⁹⁰ Students were given a quiz on what

⁸⁵ See generally Sergent & Curcio, *supra* note 82.

⁸⁶ Black & Wiliam, *supra* note 28, at 623–24.

⁸⁷ Anderson, *supra* note 49, at 133.

⁸⁸ *Id.*

⁸⁹ Kathleen M. Cauley & James H. McMillan, *Formative Assessment Techniques to Support Student Motivation and Achievement*, 83 CLEARING HOUSE: J. EDUC. STRATEGIES, ISSUES & IDEAS 1, 1 (2010).

⁹⁰ Annie Murphy Paul, *In Defense of School Testing*, TIME (Jun. 6, 2012), <http://ideas.time.com/2012/06/06/in-defense-of-school-testing/>.

they were just taught at the end of each class.⁹¹ The quiz was decidedly low-stakes.⁹² In fact, it was no-stakes; it was not graded.⁹³ The assessment was offered solely to promote retention.⁹⁴ The simple exercise, which resulted in no risk of failure for the students and very little extra work for the teachers, had a positive impact on the students' recall of the material.⁹⁵

Low-stakes assessment opportunities are not just rooted in more human teaching and good policy. They are rooted in good cognitive science as well. "Every time we pull up a memory, we make it stronger and more lasting—so that testing doesn't just measure what students know, it changes what they know."⁹⁶

VI. MUCH MORE THAN MULTIPLE CHOICE

There is more to life than multiple-choice quizzes.⁹⁷ In fact, there are numerous formative assessments tools available that can help students and professors navigate the competing tensions within the law school environment. The interest in providing multiple opportunities for feedback is at odds with the pressure for efficiency in the law school

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ Paul, *supra* note 90.

⁹⁶ *Id.*

⁹⁷ Multiple choice questions, which appear in bulk on the bar exam, have earned their fair share of criticism and defense:

Anyone who has attended a U.S. school in the last half century is familiar with the bubble tests. Students face a question with four possible answers and respond by filling in a blank "bubble" with a number two pencil. Why a number two pencil? Because the lead in the pencil is a conductor of electricity so that the answer sheets can be scored by machine. Tests that ask for bubbled answers are called multiple-choice, although sometimes controlled choice or selected response. All the terms refer to the fact that possible answers are given and the student has to choose rather than provide an individual response.

A few years ago it was justifiable to criticize multiple-choice testing because it seemed reductive. Critics charged that the questions focused on memorized facts and did not encourage thinking. However, test designers took up the challenge to make more sophisticated multiple-choice tests. In many cases multiple-choice tests now require considerable thought, even notes and calculations, before choosing a bubble.

Nonetheless, it remains true that multiple-choice tests "are clearly limited in the kinds of achievement they can measure." These tests do not ask students to produce anything, but only to recognize (even after some thought) the "right" answer. In doing so, multiple-choice tests foster a mindset that expects a right answer even though further experience in both school and life tends to frustrate that expectation.

Mitchell, *supra* note 26 (internal citations omitted).

classroom.⁹⁸ This part will specifically promote self-reflective and collaborative learning experiences that respond to the time constraints facing most law professors.

Before a professor can make the leap into low-risk formative assessment, he or she must set the stage in the classroom. These suggestions offer guidance—in both doctrinal and skills courses—for creating a culture that supports low-risk formative assessment. Below is a list of some recommendations for professors to use to help their students succeed with low-stakes formative assessments in the high-stakes law school scenario. The challenges and opportunities ahead for the creation of these tools are also briefly addressed below. The Appendices provide specific examples of low-risk formative assessments from Constitutional Law, First Amendment, and Legal Research and Writing classes.⁹⁹

- *Create student ownership in the course.* This can be accomplished in many ways. First, students can be polled on their learning objectives,¹⁰⁰ and the class can agree to goals that can be incorporated into the syllabus. Students can also maintain a “portfolio” that measures both their substance mastery and process throughout the semester. Students can also share what they hope to accomplish throughout the year and to identify concrete steps about how they will meet their goals. The goals and steps lists could then be compiled into one document, distributed to the class, and used as a “roadmap” throughout the year.
- *Determine student entry levels.* On day one, students can be surveyed about their own understanding of their strengths and weaknesses. The professor could then address the results in a subsequent class meeting and talk about the classroom profile.

⁹⁸ There are time constraints forced by students who correctly want immediate feedback on the assessments so they can close their learning gaps. But there are also serious demands for efficiency by instructors who must also juggle the other competing aspects of their job: teaching, scholarship, and service.

⁹⁹ These assessments can be adapted and implemented across the board in doctrinal classes, skills courses, clinics, workshops, and seminars. I am limiting myself to the listed subjects because of my own teaching experience. Furthermore, legal research and writing and clinics are steeped in formative assessment—this talk is new to many of my doctrinal colleagues—so I am focusing the sample assessments on Constitutional Law and the First Amendment courses.

¹⁰⁰ Friedland, *supra* note 21, at 975 (“The shared property conception can improve both the efficacy and ethos of American legal education, orienting it to meet the numerous challenges of a challenging lawyering marketplace.”).

This is an important reality check for many, especially as several students (through a combination of their K-12 education, Millennial birth, and protection by Baby Boomer parents) are struggling with a combination of being both academically underprepared and overconfident.¹⁰¹

- *Cultivate a culture of understanding in the classroom.* One advantage of compiling the student entry levels is that students recognize that they are truly one community. More importantly, students may understand that they are typically anxious about the same issues at the start of the class. This recognition helps promote a culture of understanding and respect in the classroom. Professors may also consider attempting to connect with students by hosting “brown bag” lunch sessions with small groups where any topic except class can be discussed. This can help professors to see their students fully and gives students an opportunity to share their life experiences with their peers in a supportive environment.
- *Make it plain.* Experts consistently stress the need to be explicit with students. The importance of explicit communication in the classroom should shape everything from class management policies to teaching methods to assessments. Experts in legal education have rightly emphasized the importance of being “transparent with your students—to be open in revealing the structure of your course, identifying key points to be retained from a given lesson, situating the topic you’re covering in its larger doctrinal context, and flagging important transitions as you move through the semester.”¹⁰²
- *Help students become practiced in metacognition and self-reflection.* Because lawyers are lifelong learners, law students need to practice the skills of self-reflection and self-assessment. Self-regulated learning, or expert learning, involves “planfulness, control and reflection” that is self-directed and goal-oriented.¹⁰³ Tools that bolster the practice of self-regulated learn-

¹⁰¹ For an interesting article about this phenomenon, see Ruth Vance & Susan Stuart, *Of Moby Dick and Tartar Sauce: The Academically Underprepared Law Student and the Curse of Overconfidence*, 53 DUQ. L. REV. 133 (2015).

¹⁰² HOWARD KATZ & KEVIN O’NEIL, STRATEGIES AND TECHNIQUES OF LAW SCHOOL TEACHING: A PRIMER FOR NEW (AND NOT SO NEW) PROFESSORS 31 (2009).

¹⁰³ Michael Hunter Schwartz, *Teaching Law Students to be Self-Regulated Learners*, 2003 MICH. ST. DCL L. REV. 447, 453 (2003).

ing include cognitive protocols¹⁰⁴ and journals. Checklists are also invaluable tools in helping students regulate their learning.¹⁰⁵ A professor might consider starting by giving students checklists to approach their writing assignments, for example, but ending by asking students to develop their own individualized checklists for their performance. (To help students appreciate the value of checklists, I also share with them a brief excerpt from *The Checklist Manifesto*, which explores the value of checklists in promoting efficiency and accuracy in other environments.¹⁰⁶) Because there is no “wrong” answer when creating one’s own checklist, students are generally able to approach the assignment without much anxiety.¹⁰⁷

- *Foster an environment where students are contributors to the collective knowledge.* Group assignments are an excellent way to cultivate the community of learners in the classroom. However, students are sometimes reluctant to work with others. Again, the goal is to help students overcome the high-stakes mindset that is so pervasive in law school. A few specific strategies that may be useful when making group assignments include: 1) using group activities as an opportunity to teach about the collaborative nature of law practice; 2) sharing with students essays on collaboration that address both the risks and rewards; 3) discussing in class the different ways people can collaborate; and 4) requiring the completion of group-assessment and self-assessment worksheets at the end of the collaborative exercise.
- *Take advantage of technology:* Rather than fight against the wave of technology that characterizes today’s student culture, professors can leverage technology to help them with assess-

¹⁰⁴ Many thanks to Professor Sophie Sparrow, University of New Hampshire School of Law, for introducing me to this term and method at the start of my law school teaching career. Others may refer to the same format as “reflective papers” or “journals.”

¹⁰⁵ See Enrique Reboloso Pacheco et al., *Quality Criteria for Self-Evaluation in Higher Education*, 6 J. MULTIDISC. EVAL. 16 (2009) (addressing the value of metaevaluation to help students create checklists).

¹⁰⁶ See ATUL GAWANDE, *THE CHECKLIST MANIFESTO: HOW TO GET THINGS RIGHT* (2009).

¹⁰⁷ I also offer a small, good faith completion point to help keep students motivated to make an honest effort on the assignment. The better incentive, however, is making the connection between the checklist and the avoidance of certain mistakes in their work explicit for them. In fact, one of my best students helped me recognize the value of the individual checklist—he arrived at a writing conference with his own handwritten checklist for his trial brief. After seeing how helpful that exercise was for him, I implemented an individual checklist requirement for subsequent classes.

ment. Email-based formative assessments (EFA)¹⁰⁸ are low-risk. In the EFA arena, professors can post a question and students can respond privately by email. This format allows students to get feedback without the stress of completing a “paper.” Professors are also able to respond quickly if the prompts are short and confined to discrete topics or hypos. In addition, professors can incorporate technology in the classroom by encouraging students to post blogs on topics, asking students to do a quick Internet search of images associated with a new topic, and breaking students into groups to create slide presentations on a topic.¹⁰⁹ Students should be encouraged to take an active role in the use of technology; instead of merely watching presentations, students can create them. Other low-risk formative assessment tools include the use of clicker technology or quizzes on electronic classroom platforms. Such active engagement with technology improves the efficacy of the assessment because it makes it more likely that students will be able to identify gaps in their learning and understanding of new material.

- *Use all available resources.* Without a doubt, the biggest obstacle to the integration of more formative assessment in the law school classroom is the time crunch. Because professors are already juggling teaching, service, and scholarship obligations, many cannot imagine how to effectively impose additional demands on their time. One way professors can preserve their most valuable commodity—time—is through the skillful use of all available resources. First, I have been lucky at my institution to enjoy the support and camaraderie of my colleagues. We frequently share resources, such as quizzes, practice assignments, and hypos to minimize the time required to create materials from scratch. Our Legal Research and Writing team also utilizes a shared network drive so people can quickly access materials without going through direct requests. I have also implemented a required practice IRAC-format essay in Constitutional Law with the help of my teaching assistants. To

¹⁰⁸ See generally Carl Anthony Doige, *E-mail-Based Formative Assessment: A Chronicle of Research-Inspired Practice*, J. C. SCI. TEACHING, July–Aug. 2012, at 32.

¹⁰⁹ Professor William Araiza shared this idea with me. I have had a lot of luck with this idea in my Constitutional Law class. With enough guidance, students can create slideshow presentations that are effective teaching tools for both themselves and their peers.

help students stay motivated without too much anxiety about performance, I give five points toward the final exam score for a “good faith” effort on a practice IRAC. By using teaching assistants, I can return papers faster and with fewer demands on my time. To keep things as uniform as possible, I create a detailed rubric that research assistants can use to evaluate papers. Further, I “calibrate” our grading by assigning two random papers to students to evaluate; I also evaluate the same two papers. Next, I meet with my assistant to review our findings. We discuss the strengths and weaknesses of each paper and rank them. I offer any needed corrective guidance and divide the remaining papers between the teaching assistants. Students appreciate the chance to review a rubric of what I expect from them on an IRAC, enjoy a quick turnaround on their efforts, and face little penalty for not performing well. I also get help where I need it.

- *Be creative.* Usually, the term “formative assessment” conjures up images of quizzes and more papers to grade. Neither alternative is appealing to students or professors. However, the integration of alternative assessments¹¹⁰—assessments that creatively engage the students and give them a chance to present material in a unique format—can help professors incorporate formative assessment tools that are unique and effective. And because the assessments are out-of-the-ordinary, students often approach the assignments with enthusiasm and excitement.¹¹¹ As other legal scholars have noted: “Play pedagogy

¹¹⁰ I was first introduced to this idea by Professor Steve Friedland, who used a similar concept in his classes more than a dozen years ago. Students are invited to demonstrate their understanding of a discrete subject through a creative medium. Students are encouraged to use visual arts, photography, music, and even food. The language from my assignment sheet reads, in part: “Projects should reflect a creative approach to Constitutional Law. They will be evaluated both for creativity and instructional value. The aim is to create an effective teaching tool that showcases your knowledge of a Constitutional Law concept.” See *infra* Appendix E. I have been very excited to see their interpretations of key Constitutional Law concepts this way, and I use many as teaching props for future classes. In keeping with my commitment to making assessment risks low for students, this is an optional assignment that offers students the chance to earn “bonus points” toward their final grades.

¹¹¹ Though most students are excited about the chance to record music or paint for class, some students will occasionally gripe about even the suggestion of doing something beyond the IRAC and Socratic method they expect from a law school class. As a result, I have worked harder recently to make explicit the connection between active learning and success.

not only offers alternative ways to learn and approach topics. From what we've seen, asking students to place concepts in a non-traditional format like a song, poem, or sculpture requires a grappling with the materials that results in a deeper understanding of it."¹¹² I have made alternative assessments optional and allowed students to work together if they choose to do so. All work is done out of class. In class, I have tried to think expansively about formative assessments by incorporating oral arguments and games or matches between students.¹¹³

- *Seek institutional support.* With the addition of formative assessment in the American Bar Association standards, school administration will be more attentive to the deliberate inclusion of such assessments in the curriculum. Make the most of institutional interest in formative assessment by calling for concrete institutional support. For instance, institutions can support low-risk formative assessment by offering research stipends for professors who are willing to spend a summer creating a bank of assessment tools that can be used by different instructors. In the age of austerity, low-cost support should also be explored. Recently, my school hosted a very productive brown bag session led by our curriculum committee where faculty members came together to discuss formative assessment. Institutions could also offer course release for professors who commit to expanding their offering of low-risk formative assessment tools.

The deliberate inclusion of low-risk formative assessment will absolutely require additional work and reorganization by law professors. It also requires the cultivation of a culture from day one in the classroom that allows students to “buy in” to the experience. But the variety of assessment tools, the boost to student performance and the improvement of the student experience all support the inclusion of actual low-risk assessments in the law school classroom.

¹¹² Bryan Adamson et al., *Can the Professor Come Out and Play?—Scholarship, Teaching, and Theories of Play*, 58 J. LEGAL EDUC. 481, 498 (2008).

¹¹³ There is a rise in the “gamification” of teaching assessments in the college and law school environment. Jacquelyn Bengfort, *Games Grow Up: Colleges Recognize the Power of Gamification*, ED TECH (Mar. 28, 2013), <http://www.edtechmagazine.com/higher/article/2013/03/games-grow-colleges-recognize-power-gamification>. Although there is debate about the merits of the term “game” to refer to formative assessment tools that teach substantive law or skills, the use of games, competitions, or matches with little or no grade exposure can be effective in class.

VII. CONCLUSION

Law school will always be difficult. And it should be challenging. But the high-stakes law school culture should not infect the assessment process. Law professors must incentivize good faith efforts on low-risk formative assessments that will help provide valuable information on learning outcomes. Professors should embrace the new standards as an opportunity to challenge themselves to create robust, valid, low-risk formative assessments. Such efforts can advance the feedback loop; more importantly, they can contribute positively to the student experience. Creative approaches to low-risk formative assessment can contribute positively to mental health and enhance student performance.

As the American Bar Association establishes more explicit guidelines concerning the use of formative assessment in law schools, professors must be careful not to import the grading emphasis of summative assessment into their curriculum. The high-stakes culture of law school can be alleviated—rather than exacerbated—by increased formative assessments that properly keep the emphasis on learning rather than grading. Although these low-risk formative assessments require some time and thought upfront, most are easily adaptable and can be replicated in different semesters. In addition to time constraints, the other common challenges to implementing them in class are garnering student and institutional support for activities that do not comport with traditional law school expectations. Some students may also need to be weaned from the culture of high-stakes competition. Professors can make explicit to students the connection between teaching methods and learning. Professors can also engage colleagues and administration by making these same connections clear. Also, it is essential that students are able to track their understanding of material with the availability of more feedback opportunities. Despite the additional work required for the initial implementation of these ideas, the benefits are extensive.

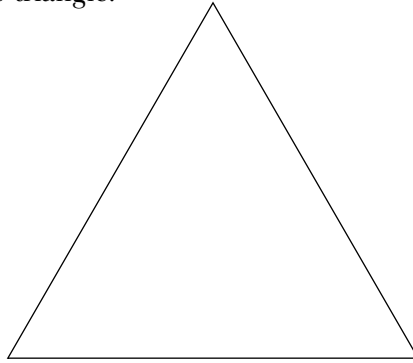
The integration of low-stakes formative assessment in the usually competitive law school environment can clarify teaching objectives, help instructors make teaching adjustments, increase feedback opportunities, allow students to practice self-regulated learning, improve assessment reliability, and positively impact the student experience. And it gives students the chance to practice before the big concert.

APPENDIX A¹¹⁴

Constitutional Law

Equal Protection Pyramid

1. Complete this triangle:



2. Complete this chart:

	Means	Ends	Burden of Proof	Deference to Government
SS				
IS				
RB				

¹¹⁴ This is an ungraded, in-class exercise used in Constitutional Law I. It takes about five minutes for students to complete. We then review together in class in another ten minutes. Students can also complete the work in pairs.

APPENDIX B¹¹⁵**Constitutional Law***School Desegregation*

Based on your understanding of the Little Rock Nine, please work with a team (three or four people) to create a PowerPoint slideshow highlighting the events. *Also identify at least two Constitutional Law issues raised by the events.* You are encouraged to use images, text from relevant case law or Constitutional provisions, and your imagination.

The top three slideshow presentations will be posted on my faculty webpage. I will also choose material from the top slideshow to include in on the Final Exam. This assignment is due at the end of the class. Make sure your slideshow presentation includes at least one slide that features the names of all of your team members.

While you are not required to include text on all slides, a slideshow presentation that is made up exclusively of images will not be acceptable.

Minimum number of slides: six slides, including the team members' names.

¹¹⁵ This is an ungraded assignment for Constitutional Law. This is an example of an easy, in-class "game" or contest the students can complete in a group. It supports collaboration, highlights key concepts, and makes a positive use of technology. It takes about twenty-five minutes of class time.

APPENDIX C¹¹⁶

**Writer's Response: Goals Sheet
Legal Research and Writing**

**Memo #1
Prof. Duhart**

You received several comments on your first, formal writing assignment. The grade is important, but I stress again that the goal is to make improvements based on identified strengths and weaknesses. Please complete the following, using your edited (graded) CREAC assignment as a guide.

1. Read the comments written on the margins and borders of your paper.
2. Please ask me for help if you do not understand anything.
3. Take a moment to record below the comments listed on your paper. This assignment is worth five points in the miscellaneous category and must be COMPLETED to receive any credit. This sheet will go into your writing portfolio, which will be maintained in my office. This goals sheet will also be used to help facilitate your individual writing conference. This completed goals sheet will serve as your required "admission ticket" to your mandatory conference next week. *No goals sheet means no conference. No exceptions.*

According to the comments on Memo 1, what are your primary strengths?

What, based on the comments, are your writing weaknesses? (Include organization, content & grammar.)

¹¹⁶ This assignment is used in Legal Research & Writing after the first graded memo is returned to students. It helps students bridge the gap between the first memo and the second. It is also intended to boost metacognitive skills. It counts as a few points in the miscellaneous category (this includes homework, small quizzes and other exercises).

What, specifically, will you need to improve as you prepare for Memo #2? Be specific!

APPENDIX D¹¹⁷**Constitutional Law II***Stolen Valor Opinion*

Congratulations! You have just been appointed (and confirmed) to the United States Supreme Court. As one of your first official duties, you must draft an opinion to the *United States v. Alvarez* case. Given your understanding of Content-Based Restrictions, please draft an opinion that includes references to the relevant portions of the Constitution, the rule you would apply, and at least one case covered in class. (Do not refer back to the *Alvarez* case here.)

You must use Times New Roman, 12-point font, and the opinion should be double-spaced. A one-inch margin is required on all sides. This assignment cannot exceed two pages. You are not required to Bluebook. Please state your name at the start of the opinion. Good news: you may write a concurring or dissenting opinion. Indicate the position you are advancing. Base your opinion on sound legal analysis and precedent. Also include at least one public policy argument. *Please underline your policy argument.*

This assignment must be completed alone; no collaboration is permitted. It is due to my faculty inbox behind my assistant no later than

¹¹⁷ This is used in Constitutional Law II. It is completed outside of class and returned with feedback and a rubric. I also spend about twenty minutes reviewing common mistakes in a follow-up class about a week later. Because it is not graded, I can limit comments to the rubric. Teaching assistants can also be utilized to help manage the papers. I also post a “model” answer for students after the feedback session.

Tuesday, Oct. 14, 2014, at 5 p.m. Late work will be subject to sanctions. Failure to complete this assignment will result in a five-point reduction on your final exam grade for this class.

APPENDIX E¹¹⁸**Grading Rubric: Commerce Clause Opinion**

Name: _____

Format requirements

- Did student adhere to two-page limit?
- Did student use Times New Roman font?
- Did student double-space throughout?
- Did student leave a one-inch margin on all sides?

Issue

- Did student properly frame the issue before the Court?
- Was it clear that the opinion was dissenting/concurring or both?

RulePower

- Was the relevant rule used?
- Did student cite the relevant portion of the Constitution?
- Did student cite the *Lopez* test?
- Did student give a complete statement of the rule?
- Was the rule amplified through the inclusion of subparts for the Substantial Affects test?
- Did student make distinction between plenary power for Interstate Commerce and rational basis standard for Substantial Affects?

Limit

- Did the student refer to the prohibition under the Tenth Amendment against Congress reaching completely internal, non-economic activities?

Application

- Did the student apply the facts in the *Gonzales* case to the Commerce Clause rule?
- Did the student initially dispose of medical use of marijuana as NOT implicating channels or instruments of interstate commerce?
- Did the student walk through the Substantial Affects test?
- Did the student address legislative findings?

¹¹⁸ This is an example of a rubric used to evaluate practice IRACs that are assessed for a few points, not a huge grade. Rubrics are key to making formative assessment more efficient for professors reading many papers. They can also be used for peer edits, self-edits, or by teaching assistants.

- Did the student address jurisdictional element?
- Did the student address substantial economic effect?
- Did student indicate that sub-factors were not dispositive?
- Was application well reasoned and sophisticated?
- Did student avoid making conclusory statements?
- Did the student raise counterarguments? (“On the other hand. . .”)

Conclusion

- Did student clearly indicate where he or she landed in conclusion?

Writing Guidelines

- Did student effectively employ any text or policy arguments?
- Did student cite at least two Commerce Clause cases discussed in class?
- Was writing grammatically correct?
- Did writing flow smoothly?
- Were transitions used as needed?
- Did submission make sense without a “live interpretation?”

APPENDIX F¹¹⁹**Constitutional Law***Alternative Assessment Project Option*

You may create an optional alternative assessment to reflect a discrete area of Constitutional Law. This assignment is entirely optional but may generate up to five points on your final score for the final examination. This grade enhancement will not necessarily advance you to the next available grade.

Projects should reflect a creative approach to Constitutional Law. They will be evaluated both for creativity and instructional value. The aim is to create an effective teaching tool that showcases your knowledge of a Constitutional Law concept.

If you elect to participate in this project, you must meet the following guidelines:

- ✓ All work must be submitted anonymously. Except for general questions, do not discuss the particulars or details of your project with me. You must preserve anonymity. Only after your final grade for Constitutional Law has been posted may you discuss your project with me. Use your exam number.

¹¹⁹ This is an ungraded, optional assignment. It has produced many creative projects including hand-made jewelry, model houses, and elaborate trading cards featuring “Constitutional Law Characters.” Students continue to surprise me with their ability to make the law appealing and accessible. The allure of bonus points is enough to get at least half of the class to participate in any given semester. I encourage students to choose a challenging topic in an effort to help them better unpack and understand more complex material.

- ✓ Each project must reflect a detailed portion of Constitutional Law; general images or projects related to Americana will not earn points.
- ✓ I reserve the right to grant partial or no credit to submitted projects.
- ✓ Group projects will be considered; all group members will share in point assessment.
- ✓ All projects must be submitted directly to my assistant. You are not permitted to give any work directly to me. You are not permitted to submit any work to student affairs.

J.D. Student Learning Outcomes

FACULTY RETREAT

September 10, 2021



5-year

REVIEW





Session Goals:

- 1- Provide a brief recap of the Law School's assessment efforts.
- 2- In breakout rooms, discuss potential revisions to the Law School's program-wide Student Learning Outcomes.
- 3- In the full group, get a brief report from each breakout room.
- 4- Take a break before the next presentation!



TAKING ON A CHALLENGE
IS A LOT LIKE **RIDING**
A **HORSE**, ISN'T IT? IF YOU'RE
COMFORTABLE WHILE
YOU'RE **DOING** IT, PROBABLY
DOING IT **WRONG.**

WWW.MARLBOROUGH.COM
THEODORE 'TED' LASSO



A quote by Theodore 'Ted' Lasso from the TV show 'Ted Lasso'. The quote is displayed in white, all-caps text on a black background. The text is framed by a thick blue border. To the right of the text is a portrait of actor Jason Bateman as Ted Lasso, with a mustache, wearing a blue shirt and a dark sweater. The entire graphic is set against a large, vibrant pink background that resembles a stack of papers or a book cover. The quote reads: "FOR ME, **SUCCESS** IS NOT ABOUT THE **WINS** AND **LOSSES**. IT'S ABOUT **HELPING** THESE **YOUNG** FELLAS BE THE BEST **VERSIONS** OF **THEMSELVES** ON AND OFF THE **FIELD**. AND IT AIN'T ALWAYS **EASY**, BUT NEITHER IS **GROWING** UP WITHOUT SOMEONE **BELIEVING** IN YOU."

WWW.MANAGERGATE.COM
THEODORE 'TED' LASSO



Breakout Rooms:

- 1- You will be moved to breakout rooms for 20 minutes (random assignment).
- 2- The faculty in each breakout room need to select a notetaker.
- 3- Discuss potential revisions to the Law School's program-wide Student Learning Outcomes.
- 4- Select a group member to report back to the full group.
- 5- The notetaker from each room needs to email the discussion notes to me next week.



YOU KNOW WHAT
THE **HAPPIEST ANIMAL ON
EARTH** IS? IT'S A **GOLDFISH**.
YOU KNOW WHY? GOT
A **TEN-SECOND MEMORY**.

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**Thank you
for your
input.
Have a
wonderful
weekend!**



Introduction to the Study of Law

Syllabus

Fall 2020

Section 11 – W, 4pm; Prof. Outenreath, alyson.oudenreath@ttu.edu, office 318C

Section 12 – W, 4pm; Prof. Cochran, wesley.cochran@ttu.edu, office 317

Section 13 – W, 3pm; Prof. Christopher, catherine.christopher@ttu.edu, office 313

Section 21 – W, 9am; Prof. Baldwin, chelsea.baldwin@ttu.edu, office 207

Section 22 – W, 9am; Prof. Baker, jamie.baker@ttu.edu, law library

Section 23 – W, 9am; Prof. Christopher, catherine.christopher@ttu.edu, office 313

Section 31 – W, 2pm; Prof. R. Sherwin, robert.sherwin@ttu.edu, office 161 Lanier

Section 32 – W, 2pm; Prof. Christopher, catherine.christopher@ttu.edu, office 313

Section 33 – W, 3pm; Prof. R. Sherwin, robert.sherwin@ttu.edu, office 161 Lanier

Please note: This course will take place online. All course materials will be located on the course Blackboard page, including links to our synchronous classes, which will be held via Zoom. The Course Outline—what we’ll be covering each week—is also available on the last page of this syllabus.

Course Overview

Some people come to law school having never met a lawyer. Some people come to law school having never written a paper longer than 10 pages. Some people come to law school having never read a book for fun. Some people come to law school having never held a paying-job. Some people come to law school as the first person in their family to attend college, much less law school. Some people come to law school from families that pride themselves on producing lawyers, judges, and legislators. Some people come to law school after immigrating to the United States. Some people occupy some middle ground where they have some but not all of the experiences listed above. Introduction to the Study of Law is a course to help students start off on correct footing regardless of what their experiences prior to law school may contain.

This course is taught in small sections so that each student is afforded a reasonable opportunity to cultivate a relationship with a lawyer-member of the faculty that can persist for the duration of law school and beyond. This course also provides an opportunity to expose and articulate some of the “rules” of the environment that are

not intuitive for individuals who have not been steeped in the traditions and expectations of academia through the circumstances of their upbringing.

This course teaches incoming students how to succeed in law school by learning how to learn and apply the law. The methods of the course are based on educational psychology—the science of learning. Instead of leaving students to teach themselves how to study law, as was often the case in the traditional law school model, this course expressly details the best practices for the study of law as students transition into full-time law study.

Our profession and our society are enriched when the legal profession is filled by people from many different walks of life, social stations, and circumstances. Of course, legal professionals must be smart and hard-working individuals, but that is not enough, legal professionals also need to understand disciplines and circumstances beyond their own.

Learning Outcomes

By the end of this course, students will be able to:

- Prepare for class efficiently and effectively
- Prepare outlines for doctrinal law school courses
- Find and complete practice questions in Torts, Civil Procedure, and Contracts
- Conduct a self-assessment of practice questions in Torts, Civil Procedure, and Contracts
- Prepare a resume and cover letter appropriate for a law firm job application

Required Textbook

Christina S. Chong, *The Perfect Practice Exam* (2016)

Optional supplements for legal education generally

Michael Hunter Schwartz & Paula J. Manning, *Expert Learning for Law Students* (3d ed. 2018)

Mary Beth Heard, *Your Brain and Law School* (2014)

Alex Ruskell, *Weekly Guide to Being a Model Law Student* (2015)
Herbert Ramy, *Succeeding in Law School* (2010)

Assessments & Grades

Students' grades will be earned through demonstration of behaviors and completion of assignments, weighted as follows:

- 25% of a student's final grade will be based on the student's quality of class participation, demonstrated civility, and demonstrated professionalism over the course of the semester;
- 75% of a student's final grade will be based on assignments requiring the submission of deliverables that will be submitted to the professor through the course's Blackboard portal, including:
 1. The accuracy and efficiency of their class-preparation materials (e.g., case briefs);
 2. The quality and completeness of outlines created for Torts, Civil Procedure, and/or Contracts classes; and
 3. The thoughtfulness and specificity of the self-assessment students conduct after completing practice questions in Torts, Civil Procedure, and Contracts.

Online & COVID-19 Considerations

Attendance.

Our synchronous (live) classes will be held via Zoom, and regular attendance policies remain in effect (see also the COVID-19 Class Attendance and Accommodation Requests statement below). My expectation is that you will be present for the entirety of every single synchronous session held at our usual time, and that you will have your camera turned on and your microphone muted unless called on. If you are unable to have your camera turned on due to personal or technology barriers, please simply let me know.

To use Zoom, you need a computer with a webcam, speakers, and a microphone. Please contact Associate Dean Sofia Chapman if you have any equipment needs.

Your prompt attendance to class is expected and required. If you will be absent, an email to your professor is appreciated. More than two absences will affect your grade in the course; four or more absences will result in you not getting credit for the course.

Although not part of the official attendance requirements maintained for regulatory compliance, we strongly encourage each student to make time for 2 or 3 individual visits with the professor over the course of the semester to help realize one of the secondary benefits of the course.

COVID-19 Class Attendance & Accommodation Requests.

In the interest of your own health and safety as well as the health and safety of the entire law school community, **if at any time during this semester you feel ill, you are strongly encouraged not to attend any face-to-face class meetings** or other University activities. Further, as explained below, the Law School provides the flexibility necessary to make reasonable, instructional accommodations for students to avoid exposure to COVID-19 and to maintain their health and safety.

If you are feeling ill and think the symptoms might be related to COVID-19:

- a. Promptly call Student Health Services at 806.743.2848 or your health care provider. Please note that Student Health Services and many other health care providers offer virtual visits.
- b. Self-report as soon as possible to the Associate Dean for Student Life, Sofia Chapman, at sofia.chapman@ttu.edu or (806) 834-2468.
- c. If your illness is determined to be COVID-19, it is imperative that you inform the Law School immediately. Contact Associate Dean Chapman as soon as possible. In addition, you must report your positive diagnosis using main campus's [COVID-19 Reporting Platform](#). Students who test and receive a positive diagnosis through Student Health Services do not need to self-report using this online application. Please note that all communication with professors and staff will be handled through the Office for Student Life and/or the Registrar's Office, and that the Office for Student Life may request documentation of your illness.

Class Attendance -

If You Are Feeling Ill and Can Attend a Class Remotely:

If you are not attending a class in person due to feeling ill, a self-quarantine/self-isolation, or some other circumstance related to the COVID-19 pandemic, but you are able to attend your classes remotely, please contact your professors as soon as possible via email to inform them so they can account for your remote attendance. If a course is not already set up for remote instruction, your professor will take the necessary steps to make reasonable instructional accommodations during the pendency of the illness, self-quarantine/self-isolation, or other COVID-19-related circumstance.

If you miss any class material during your shift to remote learning, please contact your professors for information on how to obtain the class material and. In addition, if you will miss any assignment deadline, quiz, exam, etc. due to a circumstance related to COVID-19, please contact your professor to request a reasonable extension.

If You Are Not Well Enough to Attend a Class Remotely:

If you are unable to attend class remotely due to an illness related to COVID-19, please follow the steps (a)-(c) above to ensure your absence will be properly recorded by the Law School. These steps apply to being unable to attend (1) an in-person class (a face-to-face class or a hybrid/hyflex class with alternating attendance); (2) a synchronous online class; and (3) an asynchronous online class in which you will miss an assignment deadline or quiz/exam.

Exam Proctoring.

All students must review the syllabus and the requirements including the online terms and video testing requirements to determine if they wish to remain in the course. Enrollment in the course is an agreement to abide by and accept all terms. Any student may elect to drop or withdraw from this course before the end of the drop/add period.

Online exams and quizzes within this course may require online proctoring. Therefore, students will be required to have a webcam (USB or internal) with a microphone when taking an exam or quiz. Students understand that this remote recording device is purchased and controlled by the student and that recordings from any private residence must be done with the permission of any person residing in the residence. To avoid any concerns in this regard, students should select private spaces for the testing. The University library and other academic sites at the

University offer secure private settings for recordings and students with concerns may discuss location of an appropriate space for the recordings with their instructor or advisor. Students must ensure that any recordings do not invade any third-party privacy rights and accept all responsibility and liability for violations of any third party privacy concerns. Setup information will be provided prior to taking the proctored exam. For additional information about online proctoring, you can visit the [online proctoring student FAQ](#).

Required use of masks/face coverings.

The Texas Tech University System has implemented a mandatory [Facial Covering Policy](#) to ensure a safe and healthy classroom experience. Current research on the COVID-19 virus suggests that there is a significant reduction in the potential for transmission of the virus from person to person by wearing a mask/facial covering that covers the nose and mouth areas. Because of the potential for transmission of the virus, and to be consistent with the University's requirement, students in this class are to wear a mask/facial covering before, during, and after class. Observing safe distancing practices within the classroom by spacing out and wearing a mask/facial covering will greatly improve our odds of having a safe and healthy in-person class experience. Any student choosing not to wear a mask/facial covering during class will be directed to leave the class and will be responsible to make up any missed class content or work.

Other Required Disclosures

Accommodations for Students with Disabilities.

Any student who, because of a disability, may require special arrangements in order to meet the course requirements should contact the Associate Dean for Student Life as soon as possible to make any necessary arrangements. Students should present appropriate verification from Student Disability Services during the Associate Dean's office hours. Please note that classroom accommodations cannot be provided to a student until appropriate verification from Student Disability Services has been submitted. For additional information, you may contact the Student Disability Services office in 335 West Hall or 806-742-2405.

Academic Honesty.

Academic honesty is required at all times. Please review Texas Tech OP 34.12. Like the legal profession, the School of Law is governed by ethical principles, which are

set forth in the School of Law's Honor Code. Attempts by students to present as their own work any work that they have not honestly performed is regarded by the faculty and administration as a serious offense and renders offenders liable to serious consequences, including even suspension or expulsion from the School of Law.

Religious Holy Days.

Section 51.911(b) of the Texas Education Code, which is reflected in TTU OP 34.19, provides excused absences for religious holy days. A student who intends to observe a religious holy day should make that intention known in writing to the professor prior to the absence. A student who is absent from class for the observation of a religious holy day shall be allowed to take an examination or complete an assignment scheduled for that day within a reasonable time after the absence. A student who is excused from class under this policy may not be penalized for the absence; however, the professor may respond appropriately if the student fails to complete the assignment satisfactorily.

Absence for Official University Business.

TTU OP 34.04 provides for excused absences for students conducting official university business, with proper notice to the faculty member. The faculty or staff member sponsoring the student's absence for officially approved trips or activities is responsible for providing advance notice to the student's professors.

Class Preparation.

The American Bar Association standards for accrediting law schools contain a formula for calculating the amount of work that constitutes one credit hour. According to ABA Standard 310(b)(1), a "credit hour" is "an amount of work that reasonably approximates: (1) not less than one hour of classroom or direct faculty instruction and two hours of out-of-class student work per week for fifteen weeks, or the equivalent amount of work over a different amount of time...." This is a one-credit class, meaning that we will spend the equivalent of at least one 50-minute block of time together in the classroom each week, and you will spend at least two hours working outside of the classroom for each class. All told, applying the ABA standard to the number of credits offered for this class, you should plan on spending a minimum of **3 hours per week (1 in class and at least 2 preparing for class) on course-related work.**

Discrimination, Harassment, and Sexual Violence.

Texas Tech University is committed to providing and strengthening an educational, working, and living environment where students, faculty, staff, and visitors are free from gender and/or sex discrimination of any kind. Sexual assault, discrimination, harassment, and other Title IX violations are not tolerated by the University. Report any incidents to the Office for Student Rights & Resolution, (806)-742-SAFE (7233) or file a report online at titleix.ttu.edu/students. Faculty and staff members at TTU are committed to connecting you to resources on campus. Some of these available resources are: TTU Student Counseling Center, 806-742-3674, <https://www.depts.ttu.edu/scc/> (provides confidential support on campus.) TTU 24-hour Crisis Helpline, 806-742-5555 (assists students who are experiencing a mental health or interpersonal violence crisis; if you call the helpline, you will speak with a mental health counselor.) Voice of Hope Lubbock Rape Crisis Center, 806-763-7273, voiceofhopelubbock.org (24-hour hotline that provides support for survivors of sexual violence.) The Risk, Intervention, Safety and Education (RISE) Office, 806-742-2110, <https://www.depts.ttu.edu/rise/> (provides a range of resources and support options focused on prevention education and student wellness.) Texas Tech Police Department, 806-742-3931, <http://www.depts.ttu.edu/ttupd/> (to report criminal activity that occurs on or near Texas Tech campus.)

Civility.

Texas Tech University is a community of faculty, students, and staff that enjoys an expectation of cooperation, professionalism, and civility during the conduct of all forms of university business, including the conduct of student–student and student–faculty interactions in and out of the classroom. Further, the classroom is a setting in which an exchange of ideas and creative thinking should be encouraged and where intellectual growth and development are fostered. Students who disrupt this classroom mission by rude, sarcastic, threatening, abusive or obscene language and/or behavior will be subject to appropriate sanctions according to university policy. Likewise, faculty members are expected to maintain the highest standards of professionalism in all interactions with all constituents of the university.

Diversity.

By its very design, some courses may engage topics that some students might find difficult and/or controversial. It is important that the instructor and students create an environment that values and nurtures individual and group differences and encourages engagement and interaction. Understanding and respecting multiple experiences and perspectives will serve to challenge and stimulate all participants to

learn about others, about the larger world, and about themselves. By promoting diversity and intellectual exchange we not only mirror society as it is but also model society as it should and can be.

Course Outline

All materials, including assignments, deadlines, and class meeting links, are available on the course Blackboard Page.

Law School Success Arc

Week 0 (Aug. 11/12/13): Orientation. Effective Case Briefing (Synchronous)

Week 1 (Aug. 19): Goals & Time Management (Asynchronous)

Week 2 (Aug. 26): Honey Sandwich Exercise (Synchronous)

Week 3 (Sept. 2): IRAC in Class and in Writing (Asynchronous)

Week 4 (Sept. 9): Outlining (Synchronous)

Professionalism Arc Preview

Week 5 (Sept. 16): Alumni Interview (Asynchronous)

Week 6 (Sept. 23): Practice Question—Torts (Synchronous)

Week 7 (Sept. 30): Practice Question—Contracts (Synchronous)

Week 8 (Oct. 7): Practice Question—Civil Procedure (Synchronous)

Week 9 (Oct. 14): Multiple Choice Questions in Law School (Synchronous)

Professionalism Arc

Week 10 (Oct. 21): Resumes and Networking (Asynchronous)

Week 11 (Oct. 28): Wellness in the Profession (Asynchronous)

Final Exams Success

Week 12 (Nov. 4): Learning Science (Asynchronous)

Week 13 (Nov. 11): Time Management for Finals (Synchronous)

No class Nov. 18

**Texas Tech University School of Law
Bar Prep Resources Office
Strategic Plan
2021-2022**

Context:

- Emerging from pandemic, bar exam formats nationwide are returning to normal
- Texas has only been administering the UBE since February 2021, so we are awaiting results of the first normal administration of that exam, in July 2021 (the February 2021 exam having been disrupted by pandemic and Texas-based natural disaster cold snap)
- Texas Tech Law alumni saw very high bar passage rates in the chaotic summer of 2020, attributable to many variables (including students in precarious situations deferring to a later bar exam)
- National trends for summer 2021 indicate pass rates are down a bit, which may affect Texas Tech's year-to-year comparison but hopefully will not impact our performance relative to other Texas schools
- The NCBE has announced the development of a new bar exam format, the [NextGen bar exam](#), slated for deployment in 2026; the content, format, scoring, etc. of that exam are in development

Efforts to Continue:

- Bar Readiness Workshop Series, first developed in 2019-2020 and continued in 2020-2021 (discuss with stakeholders whether continuing online format makes sense or whether we should return to in-person workshops for Spring 2022)
- Student Success Initiative, first developed in 2019-2020 and continued in 2020-2021
- Educational outreach to 3Ls prior to graduation re bar exam applications, bar prep companies, logistics of studying/moving/taking the exam, UBE score transfer
- Outreach to graduates studying for the bar exam
 - Weekly emails tailored to address needs during the evolving study process
 - Weekly study breaks, in-person (with snacks!) and online
 - Individual counseling as requested by the graduate or initiated by Texas Tech Law
 - Growing library of videos to target narrow study needs
- Refine Legal Analysis course, which will be required for certain 2L students in fall 2022 (two sections)

New Initiatives:

- Stay abreast of NextGen bar exam developments; educate faculty on coming changes as necessary (current students will not take this exam)
- Update MyTechLaw's Bar Prep Resources Office webpage
- Compare Texas Tech Law's curricular bar prep offerings to other schools'; Brian Sites of the University of Miami is compiling a national list, targeted for distribution in October

JOIN US FOR OUR

*Bar
Readiness
Workshop
Series*

DATES

(ALL TAKE PLACE IN LANIER)

All students are invited to attend the workshops to help them prepare for the bar exam. Lunch and door prizes provided at each workshop by the Office of Student Life!

TUESDAY, FEB. 4 Introduction to Bar Exam Review
12:00 PM

TUESDAY, FEB 11 Introduction to MPT
12:00 PM

SATURDAY, FEB 15 Simulated MPT @ 10:00
Debrief @ 12:00
10:00 AM

WEDNESDAY, MAR 11 Slaying the MBE
12:00 PM

TUESDAY, MAR 31 Essays: Bar Exam vs. Law School
12:00 PM

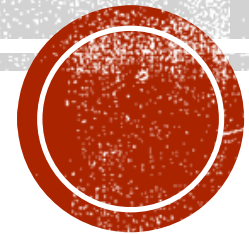
**WIN A FREE
BAR PREP
COURSE***

*3L students who attend every workshop will be entered for a chance to be reimbursed for a commercial bar prep plan (two students will be reimbursed). 3Ls who attend every workshop will also receive a free, special edition Texas Tech Law t-shirt.

INTRO TO BAR REVIEW

Prof. Cassie Christopher, Associate Dean for Bar Success

Prof. Chelsea Baldwin, Director of Academic Success Programs

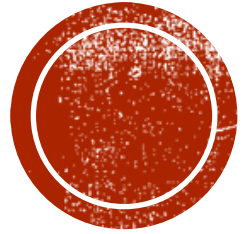


TODAY WE'LL TALK ABOUT

- Mindset for exam prep
- The science of learning
- When and how much to study
- Making a plan

Things you have control over





MINDSET



MINDSET — SELF-ASSESSMENT

Strongly Agree, Agree, Disagree, or Strongly Disagree?

- “Your intelligence is something very basic about you that you can’t change very much.”
- “Only a few people will be truly good at sports; you have to be born with the ability.”
- “I often get angry when I get feedback about my performance.”
- “Truly smart people do not need to try hard.”
- “You are a certain kind of person and there is not much that can be done to really change that.”

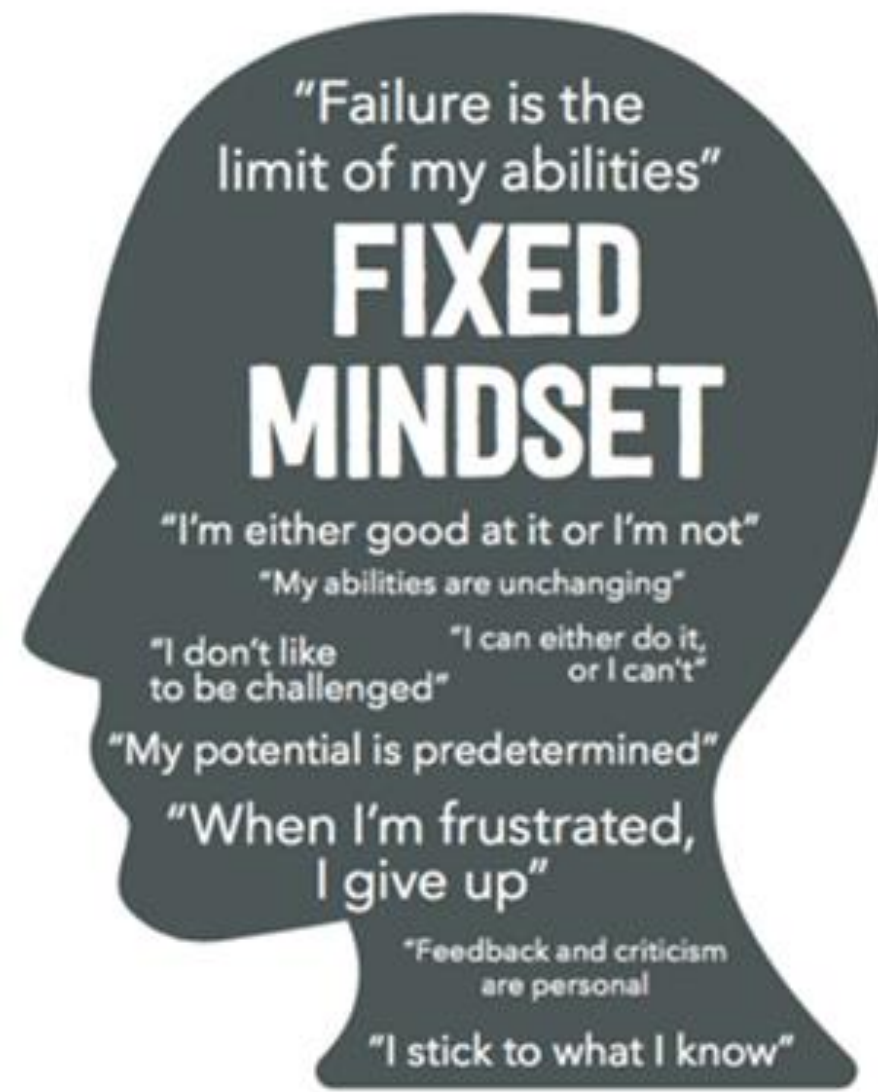


MINDSET — SELF-ASSESSMENT

Strongly Agree, Agree, Disagree, or Strongly Disagree?

- “No matter how much intelligence you have, you can always change it quite a bit.”
- “The harder you work at something, the better you will be.”
- “I appreciate when people, parents, coaches, or teachers give me feedback about my performance.”
- “You can always change how intelligent you are.”
- “An important reason why I do my school work is that I enjoy learning new things.”





ADJUSTING YOUR MINDSET

- You can train yourself to have (more of) a growth mindset.
- **Why do this?**
 - More optimistic way to go through life
 - Allows you to better cope with inevitable frustration
 - Supports mental health



“Between stimulus and response there is a space. In that space is our power to choose our response. In our response lies our growth and our freedom.”

-Viktor Frankl



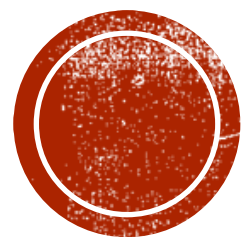
MINDSET EXERCISE

You get a C+ on a midterm.
How do you react?

Fixed Mindset

Growth Mindset





SCIENCE OF LEARNING



CONVENTIONAL WISDOM ON LEARNING

- Find a quiet place to study and always study there.
- Read passages several times, highlighting the most important ideas.
- Study one thing until you've mastered it, then move on.
- Read and review until you're confident, then test yourself.



SCIENCE OF LEARNING

- Studying in multiple locations increases retention.
- Rereading and highlighting do little to increase retention.
- Interleaving (switching up tasks and topics) leads to greater retention; cramming is effective in the short term but retention drops off dramatically.
- Testing—whether conducted during or *before* studying—increases retention.



**“Learning is deeper and more durable
when it’s *effortful*.”**

BROWN, et al., MAKE IT STICK:
THE SCIENCE OF SUCCESSFUL LEARNING (2014)



“We are poor judges of when we are learning well and when we’re not.”

BROWN, et al., MAKE IT STICK:
THE SCIENCE OF SUCCESSFUL LEARNING (2014)



MINDSET EXERCISE

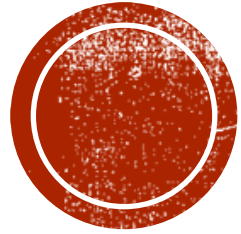
You get a so-so score on a simulated MBE, with relatively high scores in some subjects and relatively low scores in others.

How do you react?

Fixed Mindset

Growth Mindset





WHEN AND HOW MUCH TO STUDY



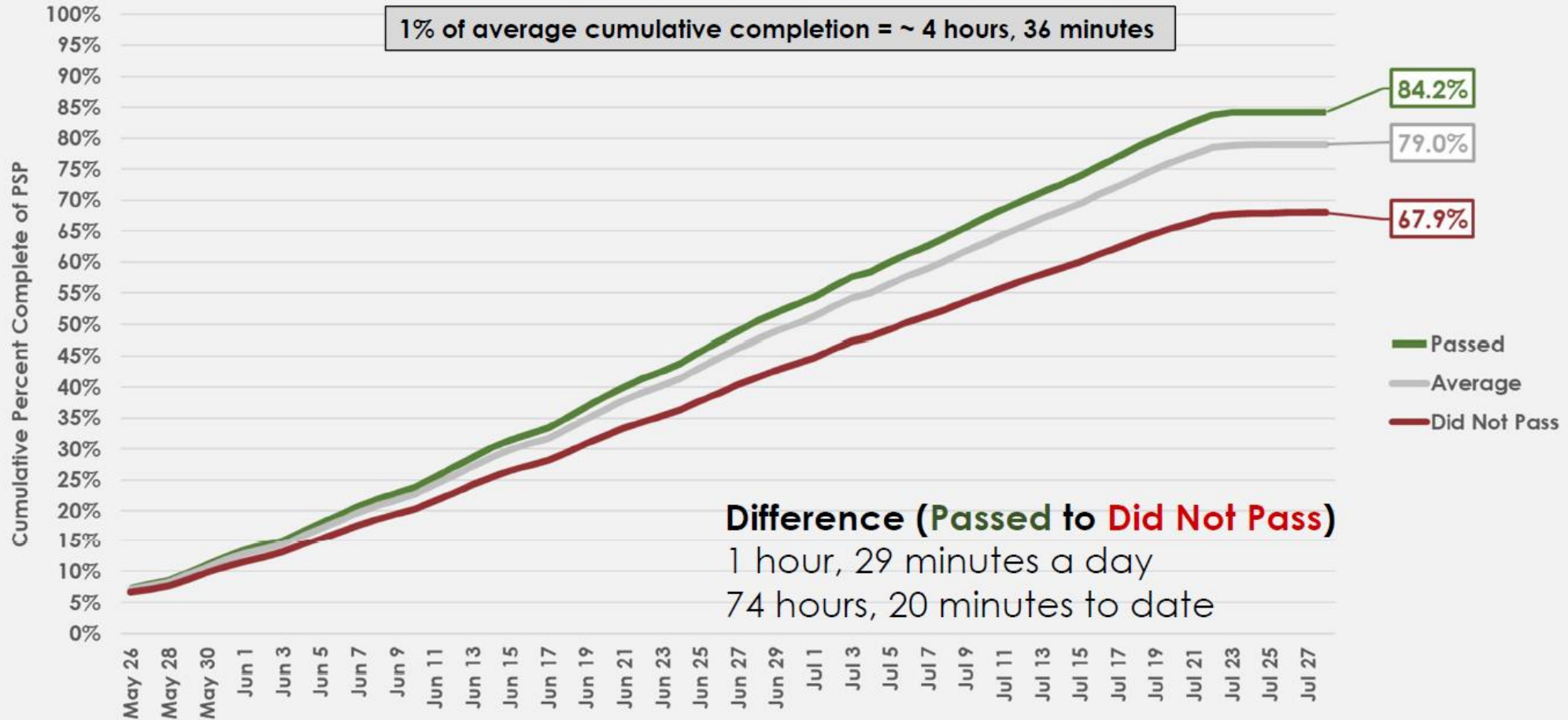
CHOOSING A BAR PREP COMPANY: IT'S TIME

Considerations:

- Cost
- Program Features
- Studying Location
- Details that will encourage/support your completion of the course



Average Cumulative Percent of Estimated TIME (IN HOURS) for COMPLETED Assignments by Day – July 28th



HOW MUCH TO STUDY

- **Overall:** 350-400 hours

- **Per week:**
 - 35-40 hours of study
 - ~10% course completion



MINDSET EXERCISE

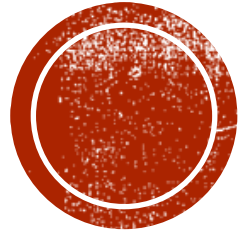
Ten days before the bar exam, you're assigned a practice essay question on a subject you're not familiar with.

How do you react?

Fixed Mindset

Growth Mindset





MAKING A PLAN



WHEN SHOULD I START STUDYING?

- If you're taking Advanced Legal Analysis, that's bar prep—you've already started.
- If you have a light semester (3LOL!), start now.
- If you have a light finals season, start then.
- If you're slammed from now to graduation, start immediately after graduation.

MAKE A SCHEDULE



IMPORTANT DATES

- April 29: Last day of classes
 - May 3-14: Final exams
 - Saturday, May 15: Graduation
 - Monday, May 17: Full-time bar prep begins
-
- ~July 1: Simulated MBE
 - July 27-28: Bar exam!



MAKE A PLAN

- During your full-time bar prep, what will your weekday schedule look like? Weekends?
- Where are 3 places you can study?
- Who are 3 people who can help support you?
- What are 2 difficulties you anticipate encountering during bar prep?
- How will you overcome those difficulties when they appear?



BAR EXAM COMPONENTS

Tuesday, July 27	Wednesday, July 28
<p data-bbox="242 582 1210 721">2 Multistate Performance Tests (20%)</p>	



BAR EXAM COMPONENTS

Tuesday, July 27

2 Multistate Performance Tests
(20%)

6 Multistate Essay Exams (30%)

- MBE subjects, plus
- Business Associations & Agency
- Conflict of Laws
- Family Law
- Secured Transactions (Article 9)
- Trusts & Estates

Wednesday, July 28



BAR EXAM COMPONENTS

Tuesday, July 27

2 Multistate Performance Tests
(20%)

6 Multistate Essay Exams (30%)

- MBE subjects, plus
- Business Associations & Agency
- Conflict of Laws
- Family Law
- Secured Transactions (Article 9)
- Trusts & Estates

Wednesday, July 28

Multistate Bar Exam (multiple choice questions) (50%)

- Civil Procedure
- Contracts
- Constitutional Law
- Criminal Law & Procedure
- Evidence
- Real Property
- Torts



BAR READINESS WORKSHOP SERIES

Free gifts for all attendees and drawings for door prizes at each workshop, provided by the Office of Student Life.

WEDNESDAY, FEB. 10
12:00 PM

INTRO TO BAR REVIEW

WEDNESDAY, FEB. 17
12:00 PM

INTRO TO THE MPT

SATURDAY, FEB. 20
10:00 AM

SIMULATED MPT & DEBRIEF

WEDNESDAY, MAR. 17
12:00 PM

SLAYING THE MBE

TUESDAY, MAR. 30
12:00 PM

**ESSAYS: LAW SCHOOL VS.
BAR EXAM**



TEXAS LAW COURSE

- Once you've applied for licensure in Texas, complete this
- Online, on-demand CLE-style presentation (long!)
- Hurdle questions
- No need to prep
- Don't have to complete before taking the bar, but nice to get it over with



FINAL THOUGHTS / POINTERS

- Studying in May & June is about course completion
- After the simulated MBE, studying is about triage: addressing your most glaring weaknesses
- Passing the bar is not a superhuman feat



TODAY WE TALKED ABOUT

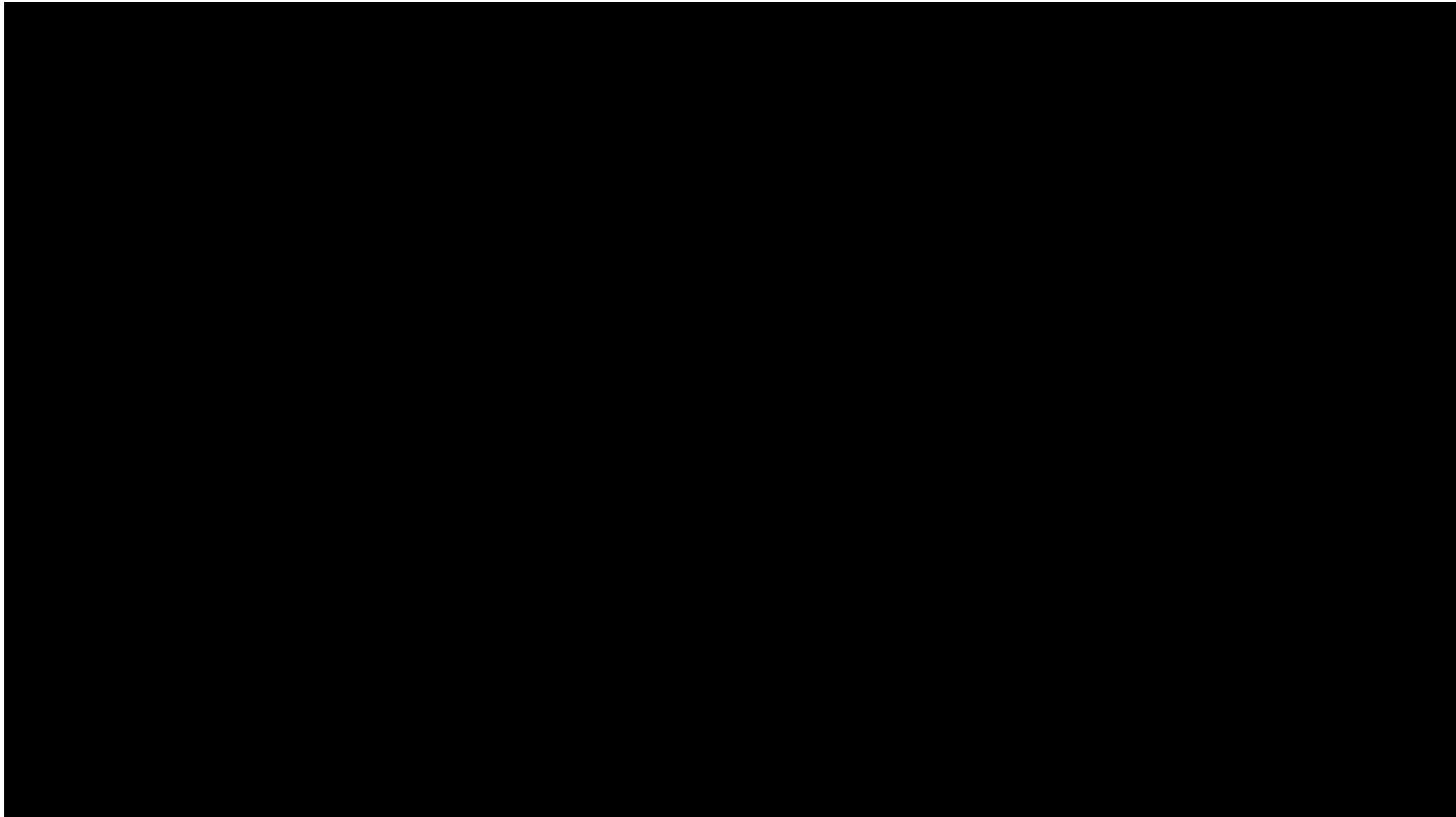
- **Mindset for exam prep:** How growth mindset helps us handle frustrations and setbacks more effectively
- **The science of learning:** Effortful studying is uncomfortable but effective
- **When and how much to study:** The importance of showing up and doing the work
- **Making a plan:** Deciding when to study and planning how to overcome anticipated challenges



CONFIRM YOUR ATTENDANCE TODAY

- **Link in the chat**
- **Stay tuned for door prizes! (Must be present to win)**



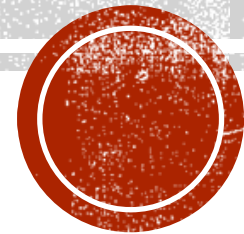




SLAYING THE MBE

Prof. Cassie Christopher, Associate Dean for Bar Success

Prof. Chelsea Baldwin, Director of Academic Success Programs



TODAY WE'LL TALK ABOUT

- I. MBE Characteristics
- II. How to Approach Questions
- III. Study Strategies
- IV. Overall Tips

- Handout



I. MBE CHARACTERISTICS

- Wednesday of the bar exam
- 200 multiple choice questions in 6 hours
 - Civ Pro, Con Law, Contracts, Crim Law & Pro, Evidence, Property, Torts
- 50% of your score (UBE)
- Target score: 125/200 (~65% correct in *each* subject—don't give up on any subject!)



I. MBE CHARACTERISTICS

- Challenges include:
 - Volume of material
 - Tricky question phrasings
 - Timing
 - Stamina



II. MBE APPROACH

A man sued a railroad for personal injuries suffered when his car was struck by a train at an unguarded crossing. A major issue is whether the train sounded its whistle before arriving at the crossing. The railroad has offered the testimony of a resident who has lived near the crossing for 15 years. Although she was not present on the occasion in question, she will testify that, whenever she is home, the train always sounds its whistle before arriving at the crossing.

Is the resident's testimony admissible?

- (A) No, due to the resident's lack of personal knowledge regarding the incident in question.
- (B) No, because habit evidence is limited to the conduct of persons, not businesses.
- (C) Yes, as evidence of a routine practice.
- (D) Yes, as a summary of her present sense impressions.

← Fact Pattern

← Call of the Question

← 4 Unique Answer Choices
(1 "key" and 3 "distractors")



II. MBE APPROACH

HS & College:

- “Pop-out” method—good for factual recall
- Will not work on the bar—tests recall *and* application



II. MBE APPROACH

1. Call of the question
2. Facts
3. Analyze
4. Conclude and choose



II. MBE APPROACH

- Read the **CALL OF THE QUESTION** first – Interrogate it!
 - Allows you to read the facts purposefully
 - Answer the question asked! Don't analyze causes of action that aren't presented to you!



II. MBE APPROACH

- Read the **FACTS** – Actively, so you only have to read them once
- Look for:
 - a. Legal relationships that indicate obligations (LL/T, employer/ee, buyer/seller, common carrier/passenger)
 - b. Numbers (amounts of money, dates, quantities, ages)
 - c. State of mind (intended, deliberately, mistakenly, decided)
 - d. Legal adjectives (oral/written, (un)reasonably)
- Draw reasonable inferences, but don't invent new facts



II. MBE APPROACH

- After reading the call of the question and the facts, **DO NOT READ THE ANSWER CHOICES**
- **ANALYZE**
 - Reread the stem and ask: What is the legal theory behind this question?
 - Articulate the rule of law that addresses that issue
 - Apply the rule to the facts and reach a conclusion



II. MBE APPROACH

- THEN, once you have a **CONCLUSION**, look for an answer **CHOICE** that matches it.



II. MBE APPROACH

1. Call of the question
2. Facts
3. Analyze
4. Conclude and choose



PRACTICE QUESTION 1



Is the seller likely to prevail?

(A)

(B)

(C)

(D)



A seller entered into a contract to sell a house to a buyer for the price of \$150,000. The contract contained the following clause: “This contract is conditional on the buyer’s securing bank financing at an interest rate of 7% or below.” The buyer did not make an application for bank financing and therefore did not secure it, and refused to proceed with the purchase. The seller sued the buyer for breach of contract.

Is the seller likely to prevail?

(A)

(B)

(C)

(D)



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Is the seller likely to prevail?

- (A) No, because the buyer did not secure bank financing.
- (B) No, because the contract did not expressly impose on the buyer any obligation to apply for bank financing.
- (C) Yes, because a court will excuse the condition to avoid a disproportionate forfeiture.
- (D) Yes, because a court will imply a term imposing on the buyer a duty to use reasonable efforts to secure bank financing.



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III. STUDY STRATEGIES: GENERAL APPROACH

- Preview “big outline” TOCs
- Watch review videos, fill out handouts/take notes
- Do practice questions
- Assess strengths and weaknesses
- Remediate weaknesses
- More practice questions



III. STUDY STRATEGIES: GENERAL APPROACH

- Preview “big outline” TOCs
- Watch review videos, fill out handouts/take notes
- **Do practice questions**
- Assess strengths and weaknesses
- Remediate weaknesses
- More practice questions



STUDY STRATEGY 1: LEARN BY DOING

True or false?

Practice questions tell me whether
I'm going to pass or fail the bar exam.

FALSE



STUDY STRATEGY 1: LEARN BY DOING

True or false?

Practice questions teach me something.

TRUE



“We are poor judges of when we are learning well and when we’re not.”

BROWN, et al., MAKE IT STICK:
THE SCIENCE OF SUCCESSFUL LEARNING (2014)



III. STUDY STRATEGIES: GENERAL APPROACH

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- **Assess strengths and weaknesses**
- Remediate weaknesses
- More practice questions



STUDY STRATEGY 2: KEEP TRACK OF YOUR ERRORS

- Time spent taking questions = Time spent reviewing answers
- If you get it right (for the right reason) pat yourself on the back and move on
- If you get it wrong, make note of the reason → Look for patterns so you can address them



III. STUDY STRATEGIES: GENERAL APPROACH

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- Watch review videos, fill out handouts/take notes
- Do practice questions
- Assess strengths and weaknesses
- **Remediate weaknesses**
- More practice questions



"Failure is an opportunity to grow"

GROWTH MINDSET

"I can learn to do anything I want"

"Challenges help me to grow"

"My effort and attitude determine my abilities"

"Feedback is constructive"

"I am inspired by the success of others"

"I like to try new things"

"Failure is the limit of my abilities"

FIXED MINDSET

"I'm either good at it or I'm not"

"My abilities are unchanging"

"I don't like to be challenged"

"I can either do it, or I can't"

"My potential is predetermined"

"When I'm frustrated, I give up"

"Feedback and criticism are personal"

"I stick to what I know"



STUDY STRATEGY 3: REMEDiate WEAKNESSES

- Some suggestions
 - Flashcards
 - Flowcharts
 - Review relevant pages of “big outline”
 - Active learning activities to help you get good at heavily-tested material



PRACTICE QUESTION 2



What is the best argument supporting the constitutionality of the statute?

A)

B)

C)

D)



Congress passed a statute providing that parties could no longer seek review in the U.S. Supreme Court of final judgments in criminal matters made by the highest court in each state.

What is the best argument supporting the constitutionality of the statute?

A)

B)

C)

D)



Congress passed a statute providing that parties could no longer seek review in the U.S. Supreme Court of final judgments in criminal matters made by the highest court in each state.

What is the best argument supporting the constitutionality of the statute?

- A) Congress has the power to make exceptions to the appellate jurisdiction of the Supreme Court.
- B) Criminal matters are traditionally governed by state law.
- C) The proper means of federal judicial review of state criminal matters is by habeas corpus.
- D) The review of state court judgments is not within the original jurisdiction of the Supreme Court.



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**#1 TIP FOR
MBE PREP:**



**TAKE THE
SIMULATED MBE**



MINDSET EXERCISE

You get a so-so score on the simulated MBE, with relatively high scores in some subjects and relatively low scores in others.

How do you react?

Fixed Mindset

Growth Mindset



STUDY STRATEGY 4: FOCUS ON HEAVILY TESTED TOPICS

- **Constitutional Law (25 Qs)**
 - ½ on individual rights: 1st and 14th Amendments
 - ½ on Constitutional powers: Articles I, II, and III
 - Don't worry if scores are low at first—they come up quickly
- **Contracts (25 Qs)**
 - ½ on offer/acceptance/consideration
 - Don't sweat third-party assignments—lightly tested



STUDY STRATEGY 4: FOCUS ON HEAVILY TESTED TOPICS

- Criminal Law & Criminal Procedure (25 Qs)
 - ½ from each
 - Re crimes: memorize common-law definitions, esp. of felonies, be able to distinguish different kinds of homicide
- Evidence (25 Qs)
 - Heavily tested: hearsay, relevancy
 - Re character evidence: just memorize the rules, don't rationalize



STUDY STRATEGY 4: FOCUS ON HEAVILY TESTED TOPICS

- Real Property (25 Qs)
 - Broad coverage
 - Slight emphasis on mortgages & future interests
 - Do not stress about RAP—barely tested!
- Torts (25 Qs)
 - $\frac{1}{2}$ questions on negligence
 - Emphasis on duty of care



OVERALL TIPS

- 6 hours: 3 hours in the a.m. (100 questions), 3 hours in the p.m. (100 questions)
- 16-17 questions per half hour
 - Draw lines on your answer sheet at 30-minute intervals: Qs 16, 33, 50, 67, 84
 - Speed up or slow down as necessary
 - If behind, skip long fact patterns



OVERALL TIPS

- ~125/200 correct
- 65% correct on ALL subjects
- Don't give up on any one subject!



TODAY WE TALKED ABOUT

- MBE Characteristics: 200 questions in 6 hours
- How to Approach Questions: Use your brain, not your gut
- Study Strategies: Triage heavily-tested topics, learn via PQs
- Overall Tips: Divide and conquer



STUDENT SUCCESS INITIATIVE



The Purpose:

1. *Purpose:* In preparation for the July 2020 bar exam, to connect 3L law students in approximately the lower 30% of the class with a Success Advisor and resources to help them succeed as first-time takers of the bar exam.
2. *Success Advisors:* Chelsea Baldwin, Sofia Chapman, Cassie Christopher, Wendy-Adele Humphrey, Alison Myrha, Danielle Saavedra, and Paula Smith.

The Basics of the Student Success Initiative:

1. *Initial Outreach:* Each Success Advisor was assigned 4-6 3L students who are in the lower 30% of the 3L class. Success Advisors contacted their assigned students to discuss the bar exam in general, bar prep plans, whether any faculty or staff member is a student's "mentor," the Bar Readiness Workshop Series, etc. Talking Points were distributed to the Success Advisors, and information gained from this initial outreach was collected using Microsoft Forms.
2. *Continued Outreach:* Success Advisors have been in regular contact with their assigned 3Ls throughout the spring semester and intend to continue regular contact through the bar exam study period this summer. Additional information learned from follow-up contact is being collected using Microsoft Forms.
3. *Bar Readiness Workshop Series:* All 3L students were invited to attend workshops to help them prepare for the July 2020 bar exam. Third-year students who attended every workshop were entered for a chance to be reimbursed for a commercial bar prep plan (four students are being reimbursed).



The workshop schedule was as follows:

- INTRODUCTION TO BAR EXAM REVIEW: Tuesday, February 4th (noon)
- INTRODUCTION TO THE MPT (also open to 2Ls): Tuesday, February 11th (noon)
- SIMULATED MPT & DEBRIEF (also open to 2Ls): Saturday, February 15th (10:00 a.m. to noon)
- SLAYING THE MBE (also open to 2Ls): Wednesday, March 11th (noon)
- ESSAYS: BAR EXAM VS. LAW SCHOOL (also open to 2Ls). Tuesday, March 31st (noon)

At the end of each workshop (except for the last one), a motivational speaker addressed students for approximately 5 minutes, and door prizes were awarded. The Office of Student Life graciously provided lunch for the noon workshops that occurred before the University shifted to Phase III Operations.

Workshop Attendance:

- Thirty-five 3Ls were identified in the lower 30% of the class.
- 22 of the 35 attended at least one Bar Readiness Workshop.
- Workshops were recorded, so students still have an opportunity to benefit from the workshop series.
- 25 3Ls were eligible for bar prep reimbursement; 2 of the 4 recipients were in the Student Success Initiative outreach group.

Intro to Bar Exam (Feb. 4th)

76 people completed the attendance proof form

- 7 1Ls
- 7 2Ls
- 62 3Ls/graduates
 - 20 of 34 students identified for Student Success Initiative outreach

Intro to the Multistate Performance Test (MPT) (Feb. 11th)

71 people completed the attendance proof form

- 4- 1Ls
- 5- 2Ls
- 62- 3Ls/graduates
 - 20 of 34 students identified for Student Success Initiative outreach



Simulated MPT (Feb. 15th)

32 people completed the attendance proof form

- 0- 1Ls & 2Ls
- 32- 3Ls
 - 10 of 34 students identified for Student Success Initiative outreach

Slaying the Multistate Bar Exam (MBE) (Mar. 11th)

49 people completed the attendance proof form

- 2 2Ls
- 47 3Ls
 - 13 of 34 students identified for Student Success Initiative outreach

Essays: Bar Exam vs. Law School (Mar. 31st)

This workshop was delivered online due to the University's COVID-19 precautions. Thirty-seven students completed the attendance proof form, but Blackboard captured 55 student attendees.

- 3 2Ls
- 52 3Ls
 - 14 of 34 students identified for Student Success Initiative outreach

Bar Prep Course Raffle

The Bar Prep Course Raffle was conducted on Blackboard on April 13th, and the following four students won bar prep reimbursement: Destiny Tatum, Phillip Arendall, Travis Yandell, and Jessica Aycock.

To: Deans & File
From: Cassie Christopher
Date: Aug. 30, 2021
Re: Student Success Initiatives, Spring/Summer 2021

In the 2019-2020 school year, Texas Tech Law began some institution-wide initiatives to support 3L bar preparation efforts, including a faculty mentor-matching program and a bar readiness workshop series. These programs were popular and successful, and so were continued in the 2020-2021 school year.

Faculty Mentor Matches

Continuing the 2019-2020 program, 39 students in approximately the bottom 30% of the 3L class were connected with faculty and staff advisors who provided support regarding the students' bar exam success. Advisors communicated with the students/graduates periodically during the 3L year and the summer after graduation. The names of the 39 students are not included here but are retained in my records.

The 2020-2021 iteration of the program was expanded to include significantly more faculty and staff advisors, representing a better diversity of genders, including Chelsea Baldwin, Cassie Christopher, Sophia Chapman, Wes Cochran, Wendy-Adele Humphrey, Bill Keffer, Rick Rosen, Danielle Saavedra, Paula Smith, and Rob Sherwin. Advisors were matched with students draft-style: the list of students was shown to the advisors, who identified students they had a good relationship with. Each advisor was ultimately matched with 3-5 students.

Advisors reached out to students in an initial contact in January 2021 and requested a meeting. Advisors were provided with a set of questions to ask and advice to pass along depending on the answers. Questions included what the student was looking forward to, how the student stays organized, which bar exam the student planned to take, anticipated challenges before graduation, etc. Data from these meetings was ultimately not collected due to privacy concerns. Advisors were asked to encourage the students to attend the 2021 Bar Readiness Workshop Series, which is discussed in more detail below.

Advisors continued to reach out and communicate with the student/graduate matches during the semester and the bar prep summer of 2021. Positive interactions were reported by many advisors and graduates.

Bar Readiness Workshop Series

All Tech Law students were invited to the Bar Readiness Workshop series, with particular emphasis on 3Ls and the students included in the mentor match arrangements described above. Five live workshops were offered via Zoom, and attendance was high:

Date	Workshop Title	Attendance
Feb. 10, 2021	Intro to Bar Review	95
Feb. 17, 2021	Intro to the MPT	79
Feb. 20, 2021	Simulated MPT & Debrief	30

Mar. 17, 2021	Slaying the MBE	63
Mar. 30, 2021	Essays: Law School vs. Bar Exam	40

Danielle Saavedra designed a color flyer, attached below, which was distributed repeatedly via email and the monitors at the law school entrances. Blake Groves gathered an almost astonishing number of items to be distributed as door prizes, so 15-18 door prizes were awarded at the end of each workshop. These ranged from \$5 gift cards to big-ticket items such as spa services, an Apple watch, etc.

Workshop content was presented by Cassie Christopher and Chelsea Baldwin. Alumni guest speakers were recruited to record motivational videos, which were played (when technology permitted) at the end of the workshops.

Workshops were recorded and the links distributed to all law students, so students were able to view the workshops after the live presentations.

The grand prize for workshop attendance was one of four free/reimbursed bar prep courses. 25 students attended all five workshops and were thus eligible for the drawing, the same number as during the spring/summer of 2020. Winners included Will Davidson, Bailey Hartman, Kaitlyn Schiraldi, and Will Witmer.

Workshop attendance among the students identified for faculty mentor matches was high. Of the 39 students identified, 27 (69.2%) attended at least one workshop, an increase in attendance over last year. Nine of these students attended all five workshops and thus qualified for the final prize drawing.

Join us for our

BAR READINESS WORKSHOP SERIES

Free gifts for all attendees and drawings for door prizes at each workshop, provided by the Office of Student Life.

WEDNESDAY, FEB. 10 12:00 PM	INTRO TO BAR REVIEW
WEDNESDAY, FEB. 17 12:00 PM	INTRO TO THE MPT
SATURDAY, FEB. 20 10:00 AM	SIMULATED MPT & DEBRIEF
WEDNESDAY, MAR. 17 12:00 PM	SLAYING THE MBE
TUESDAY, MAR. 30 12:00 PM	ESSAYS: LAW SCHOOL VS. BAR EXAM

**WIN A FREE
BAR PREP
COURSE***

*3L students who attend every workshop will be entered for a chance to be reimbursed for a commercial bar prep plan—two students will be reimbursed

Legally Blonde Meets Law School Assessment

Wendy-Adele Humphrey, Texas Tech University School of Law
NATIONAL NETWORK OF LAW SCHOOL OFFICERS (NNLSO) Conference
Campbell University Law School
October 26, 2018

Presentation Objectives:

- To learn a little bit about my audience.
- *Background:* To cover some basic terminology and the ABA's shift from input-based assessment to output-based assessment.
- *ABA Standards:* To discuss some of the ABA's Standards related to student learning outcomes and assessment.
- *What to Do?:* To discuss what steps Texas Tech Law took to comply with the ABA Standards (and SACSCOC Standards).







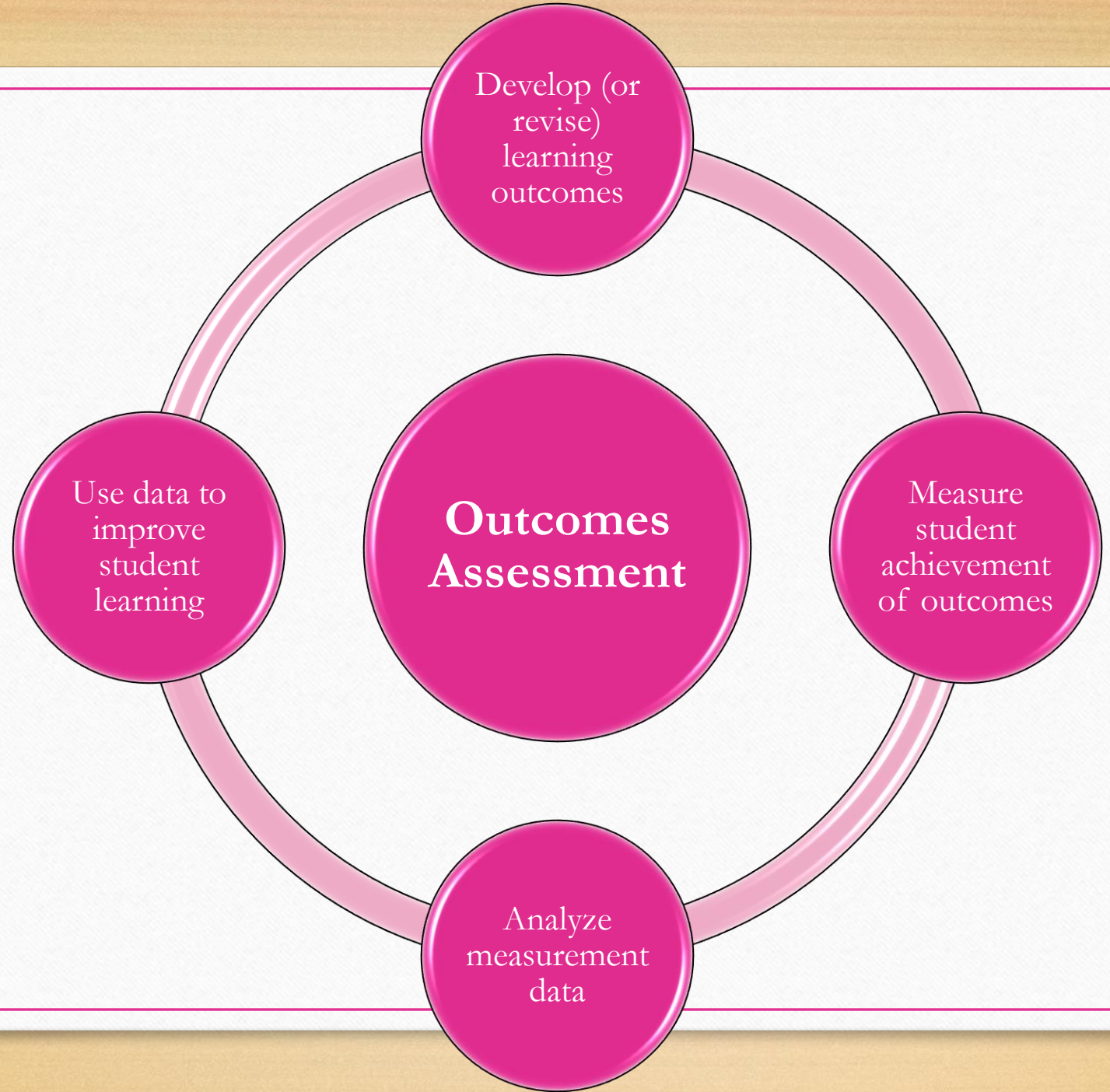
Some Basic Terminology:

- ***Institutional assessment*** – periodic assessment of performance at the highest level of an organization; requires use of the collective performance of students (learning that has taken place across the curriculum) and inherently requires individual student assessment, which includes formative assessment and summative assessment.
- ***Student Learning Outcome (SLO)*** – the knowledge, skills, and values that you desire law students at your institution to have at a specified time, e.g., upon graduation.
- ***Formative assessment*** – assessment conducted throughout the course of study through which students are provided meaningful feedback to improve their learning.
- ***Summative assessment*** – assessment “after the fact”; assessment that occurs after a course of study and does not provide an opportunity for students to improve, e.g., the bar exam.

Legal education is a process.

The outcomes assessment process is an ongoing, systematic process that requires the law school to take the following steps:

- 1- identify student learning outcomes;
- 2- measure student achievement of the learning outcomes, using data collected from student outputs;
- 3- analyze the data obtained from such measurements; and
- 4- use the data gathered to improve student learning (i.e., “close the loop”).





Exercise gives you endorphins. Endorphins make you happy.



Happy people just don't shoot their husbands.

Institutional Assessment Plan:

Involves three phases:

- 1- the *Development Stage* (this “big picture” stage include identifying the school’s student learning outcomes);
- 2- the *Implementation Stage* (create and undertake projects designed to measure the achievement of each learning outcome); and
- 3- the *Evaluation Stage* (analyze the data gathered and “close the loop” by implementing necessary changes).

ABA Standards:

- ABA Standards require us to use the collective performance of our students to assess our own performance as educators.
- This approach requires a shift in focus from what is being taught in law schools to what is being learned by students, i.e, to the quality of our students' *outputs*.
- New ABA Standards include: 301 (Objectives of Program of Legal Education), 302 (Learning Outcomes), 314 (Assessment of Student Learning), and 315 (Evaluation of Program of Legal Education, Learning Outcomes, and Assessment Methods).



“MYTH” Number One:

The outcomes assessment process should be viewed as only an ABA mandate.

Assessment as a Mandate

- Regional Accreditation Standards
- ABA Standards

Assessment as an Opportunity

- To identify our own unique strengths (and weaknesses).
- To provide *concrete* evidence to guide budgeting, curriculum design, teaching, and strategic planning.

Why aren't final grades an acceptable form of assessment?

- Grades require you to weigh multiple factors, e.g., a poor grade could be the result of the failure to spot issues, failure to accurately describe the law, etc.
- Other factors may also influence a final grade such as class participation, attendance, and penalties for late papers.
- The curve . . . with a curve, the overall course grades are essentially the same from year to year, regardless of student performance.
- As a result, grades are considered to be “an artificial construct” used to compare the performance of one student to another.

“MYTH” Number Two:

The ABA studied outcomes assessment for only a couple of years before the Council voted on the new ABA Standards.

Creation of Outcome Measures Committee

- In 2007, the ABA Section of Legal Education and Admissions to the Bar created a Special Committee on Outcomes Measures.
- The Committee's charge was to “determine whether and how we can use output measures other than bar passage and job placement, in the accreditation process. The Committee may consider approaches taken by other accrediting agencies, evaluate criticism of existing measures, and analyze relevant information and studies. The Committee also should consider methods to measure whether a program is accomplishing its stated mission and goals.”

The Committee Discovered:

- The U.S. Legal System trailed in the adoption of outcome measures.
- The ABA Standards were still dominated by an input philosophy (despite encouragement from MacCrate, Carnegie, etc. to move toward output measures).
- Legal educators in other countries transformed legal education from an input to an output model.
- Studies and surveys of the profession revealed the need to balance knowledge, skill, and ethics/values and the efforts to assess all three.
- Accreditation standards in other fields of professional education were, on average, ten years ahead of legal education in adopting output measures.

The Committee's Recommendations:

- “The Committee recommends that the Section of Legal Education . . . re-examine the current ABA Accreditation Standards and reframe them, as needed, to reduce their reliance on input measures and instead adopt a greater and more overt reliance on outcome measures.”
- The Committee cautioned that outcomes standards should not impose unnecessary costs on law schools and should not require burdensome assessment regimes of individual student achievement for each learning outcome.

Response of the Section to the Committee's Recommendations:

- The Section Council directed the Standards Review Committee (SRC) to study an outcome measures approach and make recommendations to the Council. The SRC then appointed a Student Learning Outcomes Subcommittee.
- “Legal education programs and instruction should be measured both by essential program quality indicators (e.g. sufficiency of faculty and adequacy of facilities in light of the mission and student body) and by the learning achieved by their students . . . Accreditation review in law, like other disciplines, must move law school toward articulation and assessment of student learning goals and achievement levels.”

Statement of Principles of Accreditation and Fundamental Goals of a Sound Program of Legal Education (SRC Report).

The Result:

- After multiple drafts and notice/comment opportunities, the Council approved the amendments to the ABA Standards.
- In August 2014, the ABA House of Delegates concurred in all of the revisions that requirement outcomes assessment.
- The new standards create requirements relating to two different types of assessment: **individual student assessment** (also sometimes called “classroom assessment”) and **institutional student learning outcomes assessment**.

In a Nutshell:

- **Standard 301** requires the school to establish and publish its learning outcomes.
- **Standard 302** requires that the learning outcomes include competency in certain listed essential spheres. This standard also leaves room for a law school to distinguish itself from other law schools.
- **Standard 314** requires both formative and summative assessment (thus challenging law professors to provide more meaningful feedback to improve student learning).
- **Standard 315** requires measurement of student progress. It does not require that the progress of every student be tracked as to every outcome. Nor does it require that every outcome be measured every year.

Phase-In Process:

- “In the initial phases of implementation of the outcome measures Standards set forth in Standards 301(b), 302, 303, and 314, which will begin in the 2016-17 academic year, compliance will be assessed based upon evaluation the seriousness of the school’s efforts to establish and assess learning outcomes, not upon attainment of particular level of achievement for each learning outcome.”

Phase-in Process:

“Among factors to consider in assessing compliance with these Standards are [1] whether a school has demonstrated faculty engagement in the identification of the student learning outcomes it seeks for its graduates; [2] whether the school is working effectively to identify how the school’s curriculum encompasses the identified outcomes and to integrate teaching and assessment of those outcomes into its curriculum; and [3] whether the school has identified when and how students receive feedback on their development of the identified outcomes.”

Phase-In Process:

“In the initial phases of implementation of the institutional effectiveness standard set forth in Standard 315, compliance will be assessed based on the seriousness of the law school’s effort to engage in an ongoing process of gathering information about its students’ progress toward achieving identified outcomes and whether it is using the information gathered to regularly review, assess and adapts its academic program.”

ABA Standard 302

- The student learning outcomes must reflect the learning outcomes identified by the ABA Standard 302.
- Under 302(d), “other professional skills” may include skills such as, interviewing, counseling, negotiation, fact development and analysis, trial practice, document drafting, conflict resolution, organization and management of legal work, collaboration, cultural competency, and self-evaluation. *Interpretation 302-1.*
- Further, “a law school may also identify any additional student learning outcomes pertinent to its program of legal education.” *Interpretation 302-2.*

Learning Outcomes & Performance Criteria:

- Learning outcomes are typically described in board terms because they are intended to identify and encapsulate all of the learning that is desired of a graduate in a way that is easy to understand.
- For each learning outcomes, usually there are three to seven performance criteria (or “assessment criteria”). The performance criteria express in specific and measurable/observable terms what must be shown to establish the learning outcome.
- They force you to describe in concrete terms what each outcome requires.
- They are the “bridge” between a learning outcome and the assessment task/tool to measure that outcome.

What did we do?

Created
Educational
Effectiveness
Committee

Developed
program-wide
Student Learning
Outcomes

Educated the
faculty & made a
curriculum map

What did we do?



2017-18 Implementation

Learning Outcome 1: Graduates will demonstrate competent knowledge and understanding of substantive and procedural law.

To demonstrate achievement of this learning outcome, graduates will:

Criteria	Assessment Methods	Benchmarks
1- Identify and describe key legal concepts and rules in the required curriculum.	<ul style="list-style-type: none"> ▪ Texas bar exam results ▪ MPRE results ▪ Faculty Self-Reporting Assessment, based on exams, quizzes, embedded assignments, in-class exercises, etc. 	<ul style="list-style-type: none"> ▪ Faculty will rate 80% of their students as being “competent” when assessing Criteria #1. ▪ 85% of graduates who take the Texas bar exam in Feb. and/or July 2018 will pass the exam (first-time takers). ▪ 75% of students who take the MPRE and have their score reported to the Texas BLE will pass the exam (November 2017, March 2018, and August 2018).
2- Identify and describe key legal concepts and rules in the elective curriculum.	<ul style="list-style-type: none"> ▪ Texas bar exam results, including essay questions, MBE and MPT results ▪ Faculty Self-Reporting survey, based on exams, quizzes, embedded assignments, in-class exercises, etc. 	<ul style="list-style-type: none"> ▪ Faculty will rate 80% of their students as being “competent” when assessing Criteria #1. ▪ 85% of graduates who take the Texas bar exam in Feb. and/or July 2018 will pass the exam (first-time takers).
3- Identify and describe the structure of the U.S. and Texas legal systems.	<ul style="list-style-type: none"> ▪ Faculty Self-Reporting Assessment, based on exams, quizzes, embedded assignments, in-class exercises, etc. ▪ Legal Practice embedded assignments 	<ul style="list-style-type: none"> ▪ Faculty will rate 80% of their students as being “competent” when assessing Criteria #1.

Please email this form and supporting documents to
assessment.law@ttu.edu
on or before *Friday, June 15, 2018*.

Name: _____

Course: _____

Semester & Academic Year: Spring 2018

Total Number of Students in the Course: _____

For the criteria listed below, please indicate the number of students in your course that fall into each broad “competency” category. (Keep in mind that other assessment methods, e.g., the Texas bar exam, will assess our students’ learning upon graduation.)

Learning Outcome 3: Graduates will demonstrate competent knowledge and understanding of substantive and procedural law.

To demonstrate achievement of this learning outcome, students will:

<i>Criteria</i>	<i>Approaching Competency</i>	<i>Competent</i>
Criterion #1: Identify and describe key legal concepts and rules in the required curriculum.		



It is with passion, courage of conviction, and strong sense of self that we take our next steps into the world.

Remembering that first impressions are not always correct.



Bend & Snap!

Legally Blonde Meets
Law School Assessment



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(806) 834-4446



**Southeastern Association of Law Schools
2019 Annual Conference**

Boca Raton Resort and Club | Boca Raton, FL | July 28-August 3, 2019

CONFERENCE PROGRAM



Southeastern Association of Law Schools | 2019 Annual Conference

Boca Raton Resort and Club | Boca Raton, FL | July 28-August 3, 2019

Sunday, July 28, 2019 Schedule of Events

**3:00 PM -
5:30 PM**

NEWER LAW TEACHERS WORKSHOP

Discussion Group: Keep It Simple: Giving Feedback in Large Classes

This discussion group -- which may be helpful to new teachers or anyone interested in assessment -- will examine the methods that can be used to simplify feedback in large classes. The feedback loop is central to effective teaching, but it can be a challenge in large classes. High student volume can create time and resource obstacles to professors with the best intentions. This discussion group will offer concrete teaching tips and assessment methods that can be used effectively in large classes to support the feedback loop. The discussion is designed to cover a wide range of classes and allow discussants to share the lessons they have learned on delivering effective student feedback to big groups. The short answer: simple solutions are best.

Moderator: Professor Olympia Duhart, Nova Southeastern University Shepard Broad College of Law

Discussants: Ms. Sara Berman, AccessLex Institute; Professor Steven Friedland, Elon University School of Law; Professor Reuben Garcia, UNLV William S. Boyd School of Law; Professor Brooks Holland, Gonzaga University School of Law; Professor Wendy-Adele Humphrey, Texas Tech University School of Law; Professor Alicia Jackson, Florida A&M University College of Law; Professor Loren Jacobson, University of North Texas Dallas College of Law; Professor Howard Katz, Cleveland State University, Cleveland-Marshall College of Law; Professor Joel Mintz, Nova Southeastern University, Shepard Broad Law Center; Professor Beth Parker, Nova Southeastern University Shepard Broad College of Law; Professor Jack Sahl, University of Akron School of Law; Professor Melissa Schultz, University of North Texas Dallas College of Law; Professor Michele Struffolino, Nova Southeastern University Shepard Broad College of Law; Professor Christine Tamer, University of North Texas Dallas College of Law; Professor James Willets, Nova Southeastern University, Shepard Broad College of Law

TUESDAY, JUNE 25, 2019

3:00 - 5:00 p.m.

Registration and Exhibits

Looking Glass Foyer (Third Floor)

3:30 - 5:00 p.m.

Day in the Life Sessions

Adler, Improv or Lyric (Third Floor)

Associate Deans encounter a wide variety of scenarios requiring the knowledge of academic procedures, compassion, and common sense. In this session, participants will discuss some of those scenarios and the strategies, skills, and knowledge that will help to navigate them.

Attendees will receive their room assignments at registration.

5:00 - 6:00 p.m.

Welcome Networking Reception

Looking Glass Ballroom (Third Floor)

6:00 p.m.

Dinner on Your Own

WEDNESDAY, JUNE 26, 2019

7:30 a.m. - 5:00 p.m.

Registration and Exhibits

Looking Glass Foyer (Third Floor)

8:00 - 9:00 a.m.

Breakfast

Urban Blue (Third Floor)

9:00 - 10:30 a.m.

Plenary 1: Building a Culture of Communication and Cooperation Among the Associate Deans at the Law School

Looking Glass Ballroom (Third Floor)

This panel, consisting of representatives of different Associate Deans' offices will tackle the challenges and benefits that may arise with the organization of the administrative structure in the modern law school. Due to expanded programming and shared responsibilities, there are more faculty and staff than ever before holding associate dean positions, and communication among them is critical. Topics covered will include overlapping responsibilities, opportunities to collaborate, faculty perception, student communication, and supervision of staff, among others.

MODERATOR:

Debra Moss Vollweiler, Associate Dean for Academic Affairs and Professor, Nova Southeastern University Shepard Broad College of Law

SPEAKERS:

Nancy Benavides, Associate Dean for Student Advancement, Florida State University College of Law

Larry Cunningham, Associate Dean for Assessment and Institutional Effectiveness, Professor of Legal Writing, St. John's University School of Law

Michelle Mason, Senior Associate Dean, Clinical Education, Experiential Learning & Engagement and Associate Dean for Enrollment, Florida International University College of Law

10:30 a.m.

Break

Looking Glass Foyer (Third Floor)

10:45 a.m. - Noon

Breakout 1: Skills, Talents and Interests: The Rich Human Capital of the Law School

Lyric (Third Floor)

Associate deans have to manage and support faculty in their teaching, research and student services. This panel aims to highlight the challenges faced by associate deans of all types in terms of managing, supporting and making the most of faculty talents, skills and interests.

MODERATOR:

Ruben Garcia, Associate Dean for Faculty Development and Research, University of Nevada-Las Vegas William S. Boyd School of Law

SPEAKERS:

Hannah Brenner, Associate Professor, California Western School of Law

Alex Geisinger, Associate Dean for Faculty Development and Research, Drexel University Thomas R. Kline School of Law

Juliet Moringiello, Associate Dean for Research and Faculty Development, Widener University Commonwealth Law School

Breakout 2: Deaning

Adler (Third Floor)

Have you thought about what's next after serving as an associate dean? Many at least consider pursuing a deanship. This breakout panel features a relatively new dean, two deans with experience in deanships at a total of six schools across four different states, and a long-serving dean about to retire. Join us to hear their perspectives on becoming and staying a dean and the unique rewards and challenges of that position.

SPEAKERS:

Darby Dickerson, Dean and Professor, The John Marshall Law School

Harold Krent, Dean and Professor, Illinois Institute of Technology Chicago-Kent College of Law

Jennifer Rosato Perea, Dean and Professor, DePaul University College of Law

Christopher (C.J.) Peters, Dean and Professor, The University of Akron School of Law

Breakout 3: Creating a Culture that Supports Teaching and Scholarship

Improv (Third Floor)

This panel offers concrete steps—both short term and long-term—that Associate Deans can take to create a sustainable culture that supports faculty in both teaching and research. This interactive presentation will focus on write-ins, creative research stipends, **faculty collaboration on assessment**, an expansive view of scholarship, revenue-neutral recognition efforts, hands-on training for active teaching training and other institutional measures that can be implemented to support faculty in critical areas. It will also include a discussion of programs that can be used to overcome some of the challenges that contribute to a culture of overworked or disengaged faculty. In short, this panel will propose methods to create a culture shift to promote engagement in teaching and scholarship.

SPEAKERS:

Olympia Duhart, Associate Dean for Faculty and Student Development, Nova Southeastern University Shepard Broad College of Law

Stuart Ford, Associate Dean of Research and Faculty Development, The John Marshall Law School

Wendy-Adele Humphrey, Associate Dean for Assessment & Strategic Initiatives, Texas Tech University School of Law

Alicia Jackson, Associate Dean of Student Learning and Assessment, Florida A&M University College of Law

Debra Moss Vollweiler, Associate Dean for Academic Affairs and Professor, Nova Southeastern University Shepard Broad College of Law

Lunch & Keynote Address

Urban Blue (Third Floor)

Sponsored by LSAC

OPENING REMARKS:

Camille deJorna, Deputy for Legal and Global Higher Education, LSAC

KEYNOTE ADDRESS:

Darby Dickerson, Dean and Professor, The John Marshall Law School

Plenary 2: Owning Our Stories: Leveraging Personal and Institutional Narratives to Reduce Microaggressions and Minimize the Effect of Implicit Bias

Looking Glass Ballroom (Third Floor)

This interactive discussion will invite attendees to examine how their institution can go beyond the basics of tolerance and “diversity-for-diversity’s sake.” We invite those present to think about ways their school can transition to a modern and universally-inclusive approach to diversity. By using the Law School’s own story as a model for change, participants will learn the importance of ignoring assumptions and listening to the stories of students and colleagues in crafting campus diversity initiatives. In addition, the conversation will touch on ways administrators can expand their institution’s disability services framework and bring in targeted components to better service our diverse populations of individuals in transition, PTSD, veterans, and more through topically-inclusive programming.

SPEAKERS:

Jennifer Cerny, Interim Executive Director of Student Affairs and Assistant Dean of Students, University of Connecticut School of Law

Karen DeMeola, Assistant Dean for Finance, Administration, and Enrollment, University of Connecticut School of Law

Noon - 1:15 p.m.

1:30 - 3:00 p.m.

3:00 p.m.

3:15 - 4:30 p.m.

Break

Looking Glass Foyer (Third Floor)

Breakout 1: Crisis Management

Lyric (Third Floor)

Associate deans are often called upon to manage challenging and, at times, unexpected issues involving faculty, students, alumni and others. In this panel, we will discuss common crisis situations and methods for anticipating, addressing, and preparing for similar issues going forward. We will also discuss the role that different approaches may facilitate or undermine your efforts to manage a crisis.

SPEAKERS:

Steven Todd Brown, Vice Dean for Academic Affairs and Professor, University at Buffalo Law School–SUNY

Jennifer Rosato Perea, Dean and Professor, DePaul University College of Law

Breakout 2: Tightrope:

Looking Glass Ballroom (Third Floor)

The Associate Deans' Guide to Finding Balance

The daily stressors and constant deadlines facing the associate dean make it critical for effective associate deans to find serious strategies to achieve balance. Focus, listening and concentration—all essential skills for any associate dean—are all compromised when people are working in a state of stress. Given the intellectual demands of the job and need to navigate difficult emotions encountered with colleagues and students, associate deans must be intentional about creating ways to balance professional and personal obligations. This interactive panel/discussion will explore the practical tips for the management of the stressors inherent in the multi-dimensional leadership responsibilities of associate deans. This discussion will also address the incorporation of community-building strategies as one way to foster a more balanced approach for faculty.

SPEAKERS:

Cindy Thomas Archer, Associate Dean for Clinical Programs and Experiential Learning, Loyola Law School – Los Angeles

Enrique Armijo, Associate Dean for Academic Affairs and Professor, Elon University School of Law

Olympia Duhart, Associate Dean for Faculty and Student Development, Nova Southeastern University Shepard Broad College of Law

Alicia Jackson, Associate Dean of Student Learning and Assessment, Florida A&M University College of Law

Breakout 3: New Associate Deans

Adler (Third Floor)

This breakout session is designed to bring together new, relatively new, and seasoned associate deans. In this session, we will discuss tips for managing the transition, common issues that may arise, and balancing the demands of the role against other commitments (including teaching, scholarship, and other service).

SPEAKERS:

Derrick Howard, Associate Dean for Experiential Education and Administration, Valparaiso University Law

Sondra Tennessee, Associate Dean for Alumni & Community Relations, University of Houston Law Center

Breakout 4: Skilling Up and Seeking Resources:

Improv (Third Floor)

Grant Development and Management in the Law School

This session will focus on seeking and obtaining grants to developing relationships with university grant administrators to support and develop law faculty research. The panel will brainstorm how to support particular research projects, such as those involving international and interdisciplinary topics.

MODERATOR:

Ruben Garcia, Associate Dean for Faculty Development and Research, University of Nevada-Las Vegas William S. Boyd School of Law

SPEAKERS:

Sara Berman, Esq., Director, Programs for Academic and Bar Success, AccessLex Institute Center for Legal Education Excellence

Christian Sundquist, Director of Faculty Research and Scholarship and Professor, Albany Law School

5:00 - 6:00 p.m.

Networking Reception

Discover (Second Floor)

6:00 p.m.

Dinner on Your Own

THURSDAY, JUNE 27, 2019

7:30 a.m. - 5:00 p.m.

Registration and Exhibits

Looking Glass Foyer (Third Floor)

8:00 - 9:00 a.m.

Breakfast

Urban Blue (Third Floor)

9:00 - 10:30 a.m.

Plenary 1: Legal Issues Facing Associate Deans and Guidance from Counsel on Handling Them

Looking Glass Ballroom (Third Floor)

Associate Deans may be faced with a variety of legal issues while managing their varied day-to-day responsibilities. Some of these situations include Title IX, FERPA, labor relations, financial aid regulations, disability accommodations, employment law, and student discipline. In this session, a university general counsel, a title IX coordinator, and a higher education attorney will work through several scenarios that an associate dean may encounter. Each speaker will approach the scenario from his/her area of expertise.

MODERATOR:

Sondra Tennessee, Associate Dean for Alumni & Community Relations, University of Houston Law Center

SPEAKERS:

Richard Baker, M.P.A., Ph.D., J.D., Assistant Vice Chancellor and Vice President Office of Equal Opportunity Services, University of Houston System / University of Houston

Dona Cornell, Vice Chancellor and Vice President for Legal Affairs, General Counsel, University of Houston System / University of Houston

LaKeisha Marsh, Chair, Higher Education and Collegiate Athletics Practice, Akerman

10:30 a.m.

Break

Looking Glass Foyer (Third Floor)

10:45 a.m. - Noon

Plenary 2: Assessments, Data, and Bar Exam Pass Strategies

Looking Glass Ballroom (Third Floor)

In 2014, the ABA Standards were amended to focus on outcomes assessment. Five years later, law schools are required to have learning outcomes and assessment plans. They are now beginning to collect data to assess their programs of legal education. In and out of the classroom, faculty are using formative and summative assessments to help improve student learning and bar passage rates. At many schools, associate deans are front and center with assessment and issues related to the bar exam. What should law schools do with all of the data they are collecting? How can associate deans lead faculty and others in implementing assessment in a meaningful way? For law schools that are affiliated with universities, what resources may be available to assist in the process? This session will explore these and other issues before breaking into small groups to discuss other topics related to data and assessment.

SPEAKERS:

Sara Berman, Esq., Director, Programs for Academic and Bar Success, AccessLex Institute Center for Legal Education Excellence

Larry Cunningham, Associate Dean for Assessment and Institutional Effectiveness, Professor of Legal Writing, St. John's University School of Law

Alicia Jackson, Associate Dean for Student Learning and Assessment, Florida A&M University College of Law

Lily Knezevich, Law Senior Vice President for Learning and Assessments, Law School Admission Council

Plenary will be followed by breakouts in the Lyric, Adler and Improv rooms to further discuss topics.

Noon - 1:15 p.m.

Lunch

Urban Blue (Third Floor)

Sponsored by AccessLex Institute

OPENING REMARKS:

Sara Berman, Director, Programs for Academic and Bar Success, AccessLex Institute

1:30 - 2:45 p.m.

Day in the Life Sessions II

Adler, Improv or Lyric (Third Floor)

Attendees will continue the discussions from the Tuesday Day in the Life Sessions, meeting in the same breakout rooms.

2:45 p.m.

Break

Looking Glass Foyer (Third Floor)

3:00 - 4:15 p.m.

**Plenary 3: Ask the Psychiatrist:
Addressing Law Student Mental Health Issues**

Looking Glass Ballroom (Third Floor)

Law school administrators often receive information about students for whom there is a mental health concern that interferes with the student’s well-being and education, impacts other students and faculty, and disrupts the academic community. Faculty must make decisions about how to address the situation while balancing numerous interests; including the welfare of the student in question, confidentiality, the concerns of staff and the student body, and, at times, the safety of others.

Our experts will discuss:

- Common behaviors that might come to the attention of faculty and students and what these might represent from a diagnostic standpoint;
- General options for referring students for evaluation and treatment, including involving University Student Mental Health Clinics, and the use of telepsychiatry (particularly in those areas where mental health services may be limited);
- The information the school should expect to provide and receive about the student during this process, common barriers and challenges to the process, and possible solutions; and
- An overview of more detailed forensic evaluations for “students of concern” who have been identified as a possible threat to themselves or others will be presented, including the nature and logistics of a risk assessment (in contrast to a referral for treatment) for potentially dangerous students.

A Q&A session will follow the presentations.

MODERATOR:

David Jaffe, Associate Dean of Student Affairs, American University Washington College of Law

SPEAKERS:

Natasha Cervantes, MD, Director of Forensic Psychiatry, University at Buffalo School of Medicine
Eitan Kimchi, MD, Assistant Professor and Associate Residency Training Director, Rush University Medical Center

Hossam Mahmoud, MD, Medical Director, Regroup

Carla Rodgers, MD, Clinical Associate Professor, Cooper Medical School

4:15 - 5:00 p.m.

West Academic CasebookPlus and Assessment Session Looking Glass Ballroom (Third Floor)

Join West Academic’s Stephanie Galligan for a session about CasebookPlus and West Academic Assessment. Anchored by faculty-authored formative self-assessments keyed to popular casebooks, these tools allow students to test their understanding of core concepts as they are learning them in class. Adopt the CasebookPlus option of your text to provide your students with the tools they need to gauge their understanding of the subject or subscribe to West Academic Assessment to provide all of your students with access to over 5,000 multiple choice formative self-assessment questions across seventeen subjects. Each tool also includes sample short answer and essay questions in select subjects, customizable quizzes, and reporting to help you gauge student comprehension.

*** Be sure to attend this session as attendees will be entered into a drawing to win a \$50 Visa gift card from West Academic.**

5:00 - 6:00 p.m.

Networking Reception

Urban Blue (Third Floor)

6:00 p.m.

Dinner on Your Own

FRIDAY, JUNE 28, 2019

7:30 - 11:00 a.m.

8:00 - 9:00 a.m.

9:00 - 10:30 a.m.

10:30 a.m.

Registration and Exhibits

Looking Glass Foyer (Third Floor)

Breakfast Roundtables

Urban Blue (Third Floor)

**Plenary: The Academic Workplace:
A Roadmap for Associate Deans**

Looking Glass Ballroom (Third Floor)

Even with all its unique trappings, academia is in the end a workplace. Associate Deans must be versed in the institutional and organizational aspects of human capital, as well as the boundaries and limitations of federal, state, local and university regulation. This session aims to give the context of the academic workplace from these perspectives, including the context of collective bargaining in higher education.

MODERATOR:

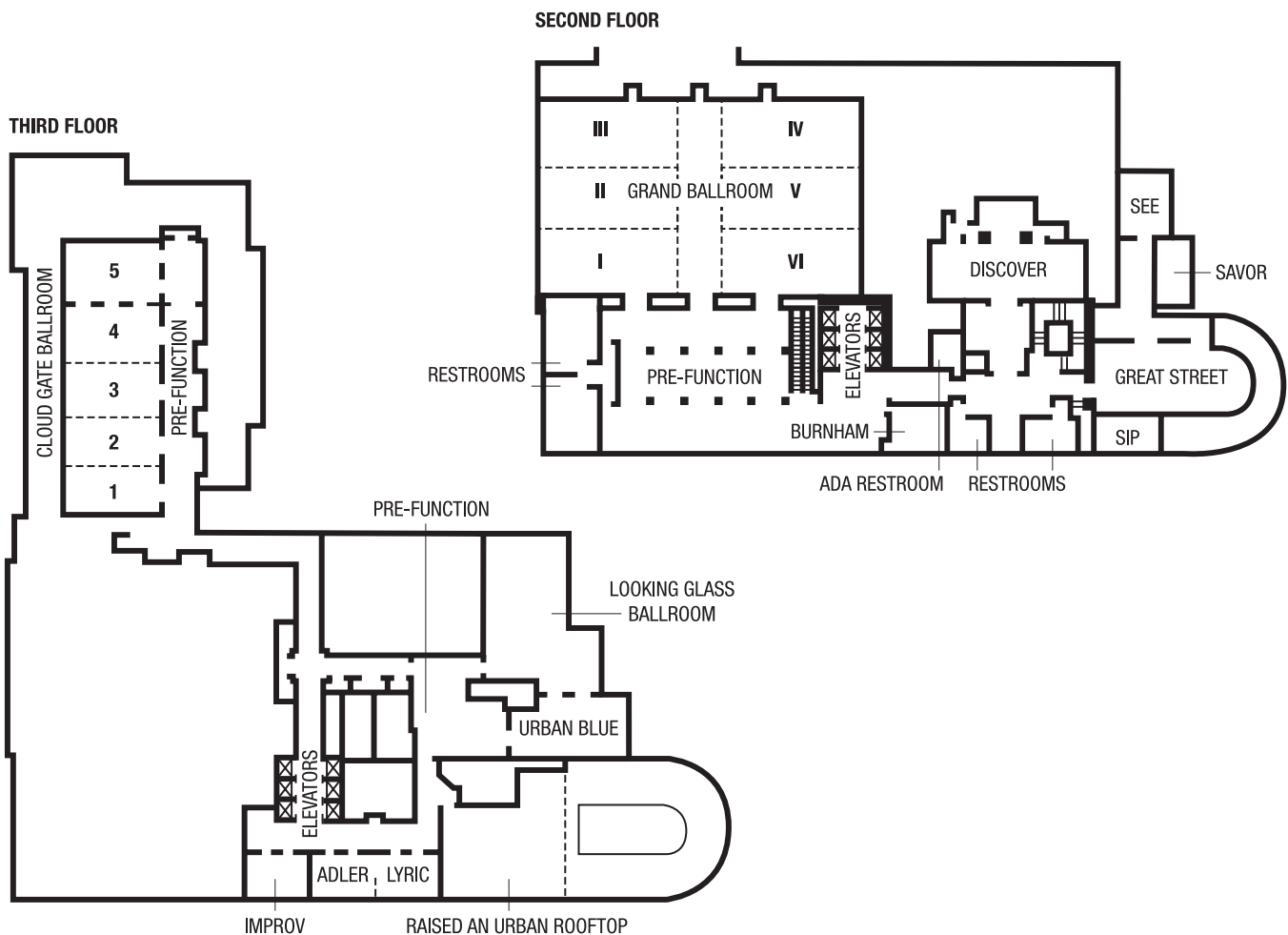
Ruben Garcia, Associate Dean for Faculty Development and Research, University of Nevada-Las Vegas William S. Boyd School of Law

SPEAKERS:

Susan Cancelosi, Associate Dean and Associate Professor of Law, Wayne State University Law School
Joseph Mastro Simone, Associate Dean for Academic Affairs, Washburn University School of Law

Conference Concludes

HOTEL MAP



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